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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK B. STEVENS and JOHN D. WILSON

Appeal 2019-006624
Application 14/147,897
Technology Center 3600

Before CARL W. WHITEHEAD JR., MICHAEL M. BARRY and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Appellant² is appealing the final rejection of claims 10–29 under 35 U.S.C. § 134(a). *See* Appeal Brief 7. Claims 10 and 16 are independent. Claims 1–9 are cancelled. *See* Claim Appendix. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Rather than reiterate Appellant’s arguments and the Examiner’s determinations, we refer to the Appeal Brief (filed April 24, 2019), the Reply Brief (filed September 6, 2019), the Final Action (mailed December 3, 2018) and the Answer (mailed July 8, 2019), for the respective details.

² We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies International Business Machines Corporation of Armonk, New York, as the real party in interest. Appeal Brief 2.

We affirm.

Introduction

According to Appellant, the invention “relates generally to providing an optimized set of delivery locations for an order, and in particular, to a computer implemented method for providing an optimized set of locker locations for an order taking into account cost and convenience.”

Specification ¶ 1.

Claim 10 is reproduced below for reference (bracketed step lettering added):

*Representative Claim*³

10. A computer usable program product comprising a non-transitory computer usable storage medium including computer usable code for use in recommending a delivery locker based on user convenience and delivery cost, the computer usable program product comprising code for performing the steps of:

[a] identifying an item to deliver to a user;

[b] prior to identifying lockers for delivering the item, utilizing a processor to analyze user activity information to predict a user route including expected timing and timing constraints of the user travelling along the predicted user route;

[c] utilizing the processor to identify a plurality of delivery routes, occurring prior to the user travelling along the

³ For the § 101 rejection, Appellant argues claims 10–27 as the first group, focusing on subject matter common to independent claims 10 and 16. *See* Appeal Brief 8. We select independent claim 10 as the representative claim. *See* 37 C.F.R. § 41.37(c)(1)(iv). Appellant argues claims 28 and 29 as the second group.

predicted user route, by at least one delivery vehicle to a set of lockers navigationally proximate to the predicted user route;

[d] utilizing the processor to analyze the item for storage requirements to identify a subset of the lockers meeting the storage requirements and an expected delivery time for each locker which the item can be delivered by at least one of the delivery vehicles prior to the user travelling along the predicted user route navigationally proximate to that subset of lockers;

[e] utilizing the processor to rank the identified subset of lockers with the ranking based on criteria including meeting the timing constraints of the user obtaining delivery of the item from the identified lockers at the navigationally proximate locations along the predicted user route wherein the ranking is based on factors including reducing delivery costs and increasing probability of delivering the item to each locker prior to the user arriving along the predicted user route navigationally proximate to the identified subset of lockers in accordance with preferences previously stored in memory;

[f] prior to delivering the item, presenting the user through a user interface across a network an ordering of the identified subset of lockers based on the ranking for user selection; and

[g] responsive to user selection of a locker from the ordering of the identified subset of lockers through the user interface, scheduling delivery of the item by one of the delivery vehicles to the user selected locker navigationally proximate to the predicted user route at the expected delivery time.

Rejection on Appeal⁴

Claims 10–29 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter. Final Action 13–18.

⁴ The Examiner indicates that “[e]very ground of rejection set forth in the Office action dated December 03, 2018” is maintained. Answer 3. There is

PRINCIPLES OF LAW

A. Section 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.

However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *Alice* 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

no mention of the status of the nonstatutory double patenting rejection of claims 10–29. *See* Answer 3; Final Action 2, 12. Appellant does not challenge the double patenting rejection. *See* Appeal Brief 7 n.1 (“The provisional non-statutory double patent rejection of claims 10-29 will be addressed during prosecution at an appropriate future time.”). We exercise our discretion and decline to address the nonstatutory double patenting rejection. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (“If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second part of the *Alice* and *Mayo* framework, where “we must examine the elements of

the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

B. USPTO Section 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (January 7, 2019) (“2019 Revised Guidance”).⁵ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing

⁵ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

human activity such as a fundamental economic practice, or mental processes) (“Step 2A, Prong One”); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁶

2019 Revised Guidance at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

2019 Revised Guidance at 52–56.

ANALYSIS

The Examiner determines claims 10–29 are patent ineligible under 35 U.S.C. § 101. *See* Final Action 14–15 (“collecting user route and delivery location information and presenting a ranking of delivery location based on an analysis of the user route, which is an idea of itself and a method of organizing human activity”); *see Alice*, 573 U.S. at 217

⁶ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance at 54–55.

(describing the two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts”).

We are not persuaded the Examiner’s rejection is in error. Unless otherwise indicated, we adopt the Examiner’s findings and conclusions as our own. We add the following primarily for emphasis and clarification with respect to the Revised Guidance.

Step 2A–Prongs 1 and 2 identified in the 2019 Revised Guidance

Prong One

Appellant argues:

While some of the Examiner’s assertions may have merit, i.e., that *certain elements* of the claim comprise subject matter historically considered as constituting an “abstract idea” (and it would be difficult to find any computer-related invention for which this is not true), the Examiner is not correct in asserting that the claims as a whole are directed to an abstract idea.

Appeal Brief 13 (underlining omitted).

The Specification discloses, “[p]rocesses and devices may be implemented and utilized for providing an optimized set of delivery locations for an order.” Specification ¶ 14.

Claim 10 recites identifying an item to deliver to a user, analyzing user activity information to predict a user route including expected timing and timing constraints of the user travelling along the predicted user route, and identifying a plurality of delivery routes, occurring prior to the user travelling along the predicted user route, by at least one delivery vehicle to a set of lockers navigationally proximate to the predicted user route in limitations [a]–[c]. Claim 10 further recites delivering the item to the

storage lockers taking into account the locker's storage capacity and ranking the lockers based upon the user's time constraints and reducing delivery cost in limitations [d]–[e]. Claim 10 also recites scheduling the delivery of the item to the locker identified by the user in limitations [f]–[g].

These steps comprise commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); thus, the claim recites the abstract idea of “certain methods of organizing human activity.” *See* 2019 Revised Guidance, Section I (Groupings of Abstract Ideas). Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *See Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378–79 (Fed. Cir. 2017) (holding that concept of “local processing of payments for remotely purchased goods” is a “fundamental economic practice, which *Alice* made clear is, without more, outside the patent system.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (concluding that claimed concept of “offer-based price optimization” is an abstract idea “similar to other ‘fundamental economic concepts’ found to be abstract ideas by the Supreme Court and this court”). Therefore, we conclude the claims recite an abstract idea pursuant to Step 2A, Prong One of the 2019 Revised Guidance. *See* 2019 Revised Guidance, Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception)).

We also agree with the Examiner's determination that claim 10 recites a mental process because the claim recites steps that can be practically carried out by humans without the use of a computer. Ans. 4 (“The claims recite a mental process because the identified idea is a concepts performed in

the human mind (including an observation, evaluation, judgement, or opinion), because but for the processor the identifying an item to deliver and identifying delivery routes limitations can be performed in the human mind.”). In particular, limitation a recites “identifying an item to deliver to a user” limitation [b] recites “analyz[ing] user activity information to predict a user route” and limitation [c] recites “identif[ing] a plurality of delivery routes.” Apart from the additional limitation of the processor, which is generic hardware as discussed below, a person can perform practically each of these functions by observing, evaluating, and compiling the information mentally or using pen and paper. 2019 Revised Guidance at 52.

Prong Two

Under Prong Two of the 2019 Revised Guidance, we must determine “whether the claim as a whole integrates the recited judicial exception into a practical application of the exception.” 2019 Revised Guidance, Section III(A)(2). It is noted that a “claim that integrates a judicial exception into a practical application will apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” 2019 Revised Guidance, Section III(A)(2).

We acknowledge that some of the considerations at Step 2A, Prong 2, properly may be evaluated under Step 2 of *Alice* (Step 2B of the Office guidance). For purposes of maintaining consistent treatment within the Office, we evaluate them under Step 1 of *Alice* (Step 2A of the Office guidance). See 2019 Revised Guidance at 55 nn. 25, 27–32.

Appellant contends, “[t]here are two aspects/elements of the claims that integrate any alleged judicial exceptions [into] a practical application and that constitute something significantly more than any alleged judicial exception.” Appeal Brief 14. Appellant states:

The first is the presenting to the user through a user interface across a network an ordering of the identified subset of lockers based on the ranking for user selection (referred to below as the user interface element), and the second is the scheduling deliver of the item by one of the delivery vehicles to the user (referred to below as the scheduling element).

Appeal Brief 14.

Appellant contends, “[t]he positioning of a preferred selectable drop-off location list item in a top portion of a displayed ranking of the present claims can easily be analogized to the positioning of a frequently-used icon close to a start icon in Example 37^[7], claim 1.” Appeal Brief 15. Appellant argues, “[t]he underlying determination as to a ranking of drop-off locations and their respective timing can easily be analogized to Example 37, claim 1’s determination as to which icons are most used and where they should be placed on the screen.” Appeal Brief 15. We do not find Appellant’s argument persuasive because the claimed subject matter is distinguishable from the subject matter in Example 37. In Example 37, the claimed subject matter was determined to be patent eligible because, “the additional elements recite a specific manner of automatically displaying icons to the user based on usage which provides a specific improvement over prior

⁷ *Example 37 -- Relocation of Icons on a Graphical User Interface*, Subject Matter Eligibility Examples: Abstract Ideas, 1–5, available at https://www.uspto.gov/sites/default/files/documents/101_examples_37to42_20190107.pdf

systems, resulting in an improved interface for electronic devices.” Claim 10’s subject matter does not improve the functioning of a device nor is it an improvement to a technology or technical field. *See* 2019 Revised Guidance at 55.

Appellant contends:

Just as in *Core Wireless [Licensing S.A.R.L. v. LG Elecs., Inc.]*, 880 F.3d 1356 (Fed. Cir. 2018)], the present claim 10, by presenting the user with an ordering that takes these relevant factors into account means that the user may only have to interact with a single screen of information, even when the screen is of a relatively small size, such as that on a smartphone device. The improvement of the claimed invention, by way of its efficiency in operating the scheduling and delivery of an item to a user, does not constitute an abstract idea here any more than the system of *Core Wireless*.

Appeal Brief 17.

We do not find Appellant’s arguments persuasive because any alleged improvement to the efficiency, speed, and accuracy, arise out of the conventional advantages of using the claimed computing system as a tool, and not a particular improvement to the computing device itself (*see Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“[M]erely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea”)); *see* 2019 Revised Guidance at 55; *see also Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1090 (Fed. Cir. 2019) (“This invention makes the *trader* faster and more efficient, not the computer. This is not a technical solution to a technical problem.”). Further, as the Federal Circuit has explained, a “claim for a *new* abstract idea is still an abstract idea.” *Synopsis, Inc. v. Mentor Graphics Corp.*, 839 F.3d

1138, 1151 (Fed. Cir. 2016). Even assuming the technique claimed was “[g]roundbreaking, innovative, or even brilliant,” that would not be enough for the claimed abstract idea to be patent eligible. *See Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). Claim 10’s method does not recite any improvement to the claimed computing system, instead the method only uses the computing system to calculate efficient deliveries. *See* Specification ¶¶ 2–4.

Further, claim 10 recites (brackets added):

[f] prior to delivering the item, presenting the user through a user interface across a network an ordering of the identified subset of lockers based on the ranking for user selection; and

[g] responsive to user selection of a locker from the ordering of the identified subset of lockers through the user interface, scheduling delivery of the item by one of the delivery vehicles to the user selected locker navigationally proximate to the predicted user route at the expected delivery time.

Thus, the claim’s recitation of displaying data is unlike patent-eligible claims directed to displaying data such as the claimed user interface in *Core Wireless*. In *Core Wireless*, the court held that claims which recited an interface were patent eligible because the claims recited specific limitations of the interface such as: an application summary that can be reached through a menu, the data being in a list and being selectable to launch an application, and additional limitations directed to the actual user interface displayed and how it functions. *Core Wireless*, 880 F.3d at 1363. The court found that the claims were directed to an improved user interface and not the abstract concept of an index as the claim “limitations disclose a specific

manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer.” *Core Wireless*, 880 F.3d at 1363; *see also Trading Techs. Int’l, Inc. v. CQG, Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017) (holding that a user interface with a prescribed functionality directly related to the interface’s structure, that is addressed to and resolves a problem in the art, is patent eligible.). In Appellant’s claim 10, there are no limitations directed to a specific manner of displaying a limited set of information to the user and there are no limitations directed at how the user interacts with the displayed data and, therefore, we find Appellant’s arguments unpersuasive.

Additionally, we detect no additional element (or combination of elements) recited in Appellant’s representative claim 10 that integrates the judicial exception into a practical application. *See* 2019 Revised Guidance, Section III(A)(2). For example, Appellant’s claimed additional elements (e.g., storage, user interface, processor, network) do not: (1) improve the functioning of a computer or other technology; (2) is not applied with any particular machine (except for a generic computer device); (3) does not effect a transformation of a particular article to a different state; and (4) is not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception. *See* MPEP § 2106.05(a)–(c), (e)–(h).

Accordingly, we determine the claim does not integrate the recited judicial exception into a practical application. *See* 2019 Revised Guidance, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception,

Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application)).

Step 2B identified in the 2019 Revised Guidance

Next, we determine whether the claim includes additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept. *Alice*, 573 U.S. at 217–18 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

Appellant contends, “[e]ven assuming that the claims recite a judicial exception, and *arguendo* that the claims are not directed to a practical application, Appellant respectfully asserts that the claims constitute significantly more than any alleged judicial exception, under Step 2B of the *Alice/Mayo* test” and the “combined elements collectively serve to improve the operation of a delivery scheduling computer such that a user is ultimately able to receive items in a faster and more efficient manner, and for these reasons, claims 10–29 contain patentable subject matter under 35 U.S.C. § 101.” Appeal Brief 22–23.

We note that in *BASCOM*,⁸ our reviewing court found that while the claims of the patent were directed to an abstract idea, the patentee alleged an “inventive concept can be found in the ordered combination of [the] claim limitations that transform the abstract idea of filtering content into a particular, practical application of that abstract idea.” *BASCOM*, 827 F.3d at 1352. In particular, the patent in *BASCOM* claimed “a technology-based solution (not an abstract-idea-based solution implemented with generic

⁸ *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

technical components in a conventional way) to filter content on the Internet that overcomes existing problems with other Internet filtering systems.” *BASCOM*, 827 F.3d at 1351. Claim 10 is distinguishable, as it recites an abstract-idea-based solution, that is, a method of recommending a delivery locker for sale or order items based upon the geographical location of the storage lockers and users. *See generally* Specification. Therefore, we are not persuaded that ordered combinations of steps in representative claim 10 provide an inventive concept. *See* 2019 Revised Guidance at 56. We find the claims do not include a specific limitation or a combination of elements that amounts to significantly more than the judicial exception itself. *See* Memorandum, Section III(B) (Step 2B: If the Claim Is Directed to a Judicial Exception, Evaluate Whether the Claim Provides an Inventive Concept).

Appellant argues, “Claims 28 and 29 are argued separately because they have the additional elements of preventing the user from unlocking the user-selected locker until a predetermined time and providing a code for unlocking the locker to the user at the predetermined time.” Appeal Brief 23. Appellant also argues, “[u]nder the *Alice/Mayo* test - Step 2A, Prong 2, preventing access to a locker clearly constitutes a further practical application (theft avoidance of an object located in an otherwise publicly accessible place) into which the claimed invention is integrated.” Appeal Brief 23. Appellant contends, “[t]he Examiner relies on this element being well-understood, routine, and conventional in nature, but these are not properly taken into consideration under the Prong 2 analysis.” Appeal Brief 23.

The 2019 Revised Guidance states:

In accordance with existing guidance, an examiner's conclusion that an additional element (or combination of elements) is well understood, routine, conventional activity must be supported with a factual determination. For more information concerning evaluation of well-understood, routine, conventional activity, see MPEP 2106.05(d), as modified by the USPTO *Berkheimer*^[9] Memorandum.^[10]

2019 Revised Guidance, 84 Fed. Reg. at 56 n.36 (Section III(B)) (emphasis added, italics omitted).

The *Berkheimer* Memorandum Section III(A) states when formulating rejections, “[i]n a step 2B analysis, an additional element (or combination of elements) is not well-understood, routine or conventional unless the examiner finds, and expressly supports a rejection in writing.” *Berkheimer* Memorandum at 3. The *Berkheimer* Memorandum provides four criteria for the Examiner to utilize to provide support for the additional elements to be considered to be well-understood, routine or conventional.¹¹

⁹ *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018).

¹⁰ USPTO Memorandum, Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*) (Apr. 19, 2018) (“*Berkheimer* Memorandum”), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF>).

¹¹ *Berkheimer* Memorandum at 3–4 (Section III(A)) (“1. A citation to an express statement in the specification or to a statement made by an applicant during prosecution that demonstrates the well-understood, routine, conventional nature of the additional element(s). . . . 2. A citation to one or more of the court decisions discussed in MPEP § 2106.05(d)(II) as noting the well-understood, routine, conventional nature of the additional element(s). 3. A citation to a publication that demonstrates the well-understood, routine, conventional nature of the additional element(s). . . .

The Examiner determines:

Regarding claims 28-29, the specification demonstrates the well-understood, routine, conventional nature of the following additional elements because they are described in a manner that indicates the elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. 112(a): sending an access code at a specific time (Specification [0063]).

Final Action 17.

Accordingly, Examiner supports the determination by citing to Appellant's Specification paragraph 63. By doing so, we determine the Examiner has sufficiently established that the additional elements are well-understood, routine, or conventional as required by the *Berkheimer* Memorandum. We do not find Appellant's argument persuasive because, in determining if the additional elements (or combination of additional elements) represent well-understood, routine, conventional activity, the Examiner supported the determination based upon a factual determination as specified in the *Berkheimer* Memorandum. *See Berkheimer* Memorandum at 3–4 (Section III(A)(1)). We agree with the Examiner's finding because the Specification does not describe the particulars of the argued additional elements, thereby indicating these elements are sufficiently well-understood in the art. Final Action 17 (citing Specification ¶ 63); Answer 18–19. Appellant, in turn, fails to specifically address the Examiner's reliance on the Specification or to persuasively demonstrate why the argued limitations

4. A statement that the examiner is taking official notice of the well-understood, routine, conventional nature of the additional element(s).”).

are not well-understood, routine, or conventional, whether under *Berkheimer* or any other authority. *See* Appeal Brief 23–24.

Accordingly, we conclude claims 10–29 are directed to commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); thus, the claim recites the abstract idea of “certain methods of organizing human activity” identified in the 2019 Revised Guidance; and thus, an abstract idea with the claims failing to recited limitations that amount to significantly more than the abstract idea itself. We sustain the Examiner’s § 101 rejection of claims 10–29.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
10–29	101	Eligibility	10–29	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED