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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHELLE YIP CHEN, VIKAS SRIVASTAVA and
MICHAEL TESTA

Appeal 2020-001525
Application 14/637,247
Technology Center 3600

Before JEAN R. HOMERE, CARL W. WHITEHEAD JR. and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Appellant² is appealing the final rejection of claims 1–3 and 5–8 under 35 U.S.C. § 134(a). *See* Appeal Brief 5. Claim 1 is independent.

¹ Rather than reiterate Appellant’s arguments and the Examiner’s determinations, we refer to the Appeal Brief (filed August 28, 2019), the Reply Brief (filed December 22, 2019), the Final Action (mailed February 28, 2019) and the Answer (mailed October 22, 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 INTEGRAL DEVELOPMENT CORPORATION, a corporation of the State of Delaware, as the real party in interest. Appeal Brief 3.

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Claim 4 is cancelled. *See* Claim Appendix. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Introduction

According to Appellant, the claimed subject matter is directed to:

[A] trade netting module, when executed by the processor, is configured to generate, at a first point in time, a first netting plan that is designed to offset at least one trade included in the one or more trades organized by currency pairs against at least one other trade included in the one or more trades organized by currency pairs. The trade netting module, when executed by the processor, is further configured to estimate, for the first netting plan, a first value that is proportional to an expected savings based on real-time market data and associated with executing the portfolio of trades according to the netting plan versus executing the portfolio of trades without the netting plan, where the first value is not exceeded by a cost of trading that is proportional to a change in market value of the portfolio of trades between the first point in time and a time that a first trade included in the portfolio of trades is executed.

Specification ¶ 8.

Claim 1 is reproduced below for reference (bracketed step lettering added):

Representative Claim³

1. A computing device, comprising:
[a] a processor; and

³ Appellant argues claims 1–3 and 5–8 as a group, focusing on subject matter common to independent claim 1. *See* Appeal Brief 10. We select independent claim 1 as the representative claim. *See* 37 C.F.R. § 41.37(c)(1)(iv).

[b] a memory that includes a reception module, a trade organization module, a trade netting module, and a trade execution module, wherein, when executed by the processor:

[c] the reception module is configured to receive trade information

[c1] describing two or more trades included in a portfolio of trades that is to be executed, wherein the two or more trades include:

a first trade expressed in a base currency of a first currency pair, and

a second trade expressed in a term currency of the first currency pair;

[d] the trade organization module is configured to organize the two or more trades included in the portfolio of trades as one or more currency pairs;

[e] the trade netting module is configured to:

[e1] for at least one of the first trade or the second trade, estimate a non-provided trade amount not included in the trade information and based on a mid-market rate,

[f] generate, at a first point in time, a first netting plan that includes:

[f1] a netted amount comprising an amount that is netted among the two or more trades included in the portfolio of trades, wherein the netted amount is

based on the trade information and the non-provided trade amount,
and

[f2] a market amount comprising an amount remaining for one or more trades in the portfolio of trades after the netted amount is executed, and

[g] estimate, for the first netting plan, a first transaction cost that is based on real-time market data and is associated with executing the portfolio of trades according to the netting plan versus executing the portfolio of trades without the netting plan; and

[h] the trade execution module is configured to:

[h1] execute, as a market trade, a first trade associated with the [] market amount and the first netting plan, wherein the first trade is not included in the netted amount,

and

[h2] further wherein the first transaction cost is not exceeded by a market transaction cost associated with a first error term comprising a change in the market amount between the first point in time and a time that the first trade is executed.

Rejection on Appeal

Claims 1–3 and 5–8 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Action 19–23.

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.”).

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 waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S.

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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.* (citation omitted) (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”).⁴ “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 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”).⁵

2019 Revised Guidance at 52–55.

⁴ 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).

⁵ 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.

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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 1–3 and 5–8 are patent ineligible under 35 U.S.C. § 101. *See* Final Action 20–21 (“covers performance of the limitation(s) as a certain method of organizing human activity, a fundamental economic practice of steps for netting foreign exchange currency transactions”); *see Alice*, 573 U.S. at 217 (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:

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According to the 2019 Guidance, for a claim to be an abstract idea, the claim must recite limitations that fall within the subject matter groupings of at least one of: mathematical concepts, certain methods of organizing human activity, and processes. See 2019 Guidance, 84 Fed. Reg. at 52, 54. Appellant submits that the present claims do not recite any limitations falling within any of these groupings.

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The Specification discloses in regard to the related art:

A computer system associated with a foreign exchange could receive such a portfolio of trades and could provide a quote for each proposed trade in the portfolio. After a trader approves each quote in the portfolio, the exchange system could execute the corresponding trade. Once all trades are executed, the proceeds from each trade could be transferred to the corresponding account.

Specification ¶ 4.

The Specification further discloses, “One drawback of the above approach is that each trade is executed at market rate and has an associated transaction cost” and “even if one trade in the portfolio could have been offset with another trade in the same portfolio, each trade is executed separately at the market rate and, consequently, incurs a separate transaction cost.” Specification ¶ 5.

In an effort to reduce the transaction costs associated with such portfolio of trades, some approaches attempt to analyze a given portfolio for potential offsetting trades, estimate how those offsetting trades are valued based on currently available market data, and then attempt to offset trades where possible. Any remaining trades that cannot be internally offset are executed individually at market rates, as described above. Finally, all residual trades are executed to account for any differences in market rates arising between the time the estimates for the offsetting trades are calculated and the time that the market trades are executed. This difference is referred to herein as an “error term.”

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Specification ¶ 5.

“One major drawback of such efforts is that market rates can change significantly between the time the offsetting trades are estimated and the time the market trades are executed” and “[s]uch market rate changes can cause large error terms, resulting in relatively large residual trades that reduce the advantages of internally offsetting trades in the first instance.”

Specification ¶ 6.

Further, the transaction costs associated with the residual trades typically increase as the error terms increase, thereby adding more cost to the efforts to reduce transaction costs described above. Further a large market movement is more likely to occur during a more time-intensive manual calculation, which could result in the realized transaction cost being multiples of the original estimates.

Specification ¶ 6 (emphasis added).

The claimed invention estimates:

for the first netting plan, a first value that is proportional to an expected savings based on real-time market data and associated with executing the portfolio of trades according to the netting plan versus executing the portfolio of trades without the netting plan, where the first value is not exceeded by a cost of trading that is proportional to a change in market value of the portfolio of trades between the first point in time and a time that a first trade included in the portfolio of trades is executed.

Specification ¶ 8 (emphasis added).

Claim 1 recites receiving trade information for first and second trades wherein the first trade is expressed in a base currency of a first currency pair and the second trade is expressed in a term currency of the first currency pair in limitations [c]–[c1]. Claim 1 further recites organizing the trades, estimating a trade amount for at least one of the trades and generating a netted amount based upon trade information and a non-provided trade

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amount in limitations [d]–[f2]. Claim 1 also recites estimating a first transaction cost associated with executing the portfolio of trades without the netting pan, executing a first trade associated with the market amount and the first netting plan wherein the transaction cost is not exceeded by a market transaction cost associated with a first error term in limitations [g]–[h2].

These steps comprise fundamental economic principles or practices (including hedging, insurance, mitigating risk); 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 Alice*, 573 U.S. at 219–20 (concluding that use of a third party to mediate settlement risk is a “fundamental economic practice” and thus an abstract idea); *id.* (describing the concept of risk hedging identified as an abstract idea in *Bilski* as “a method of organizing human activity”); *Bilski*, 561 U.S. at 611–612 (concluding that hedging is a “fundamental economic practice” and therefore an abstract idea); *Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1280 (Fed. Cir. 2012) (concluding that “managing a stable value protected life insurance policy by performing calculations and manipulating the results” is an abstract idea); *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.”). Therefore, we conclude the claims recite an abstract idea pursuant to Step 2A, Prong One of the 2019 Revised Guidance. *See* 2019

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Revised Guidance, Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception).

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, “the trade netting module of the claimed approach is able to generate a specific netting plan for a large number of user-selected trades based on both user provided trade information and non-provided trade information” and therefore the claimed system “provides a practical application of executing trades for an entire portfolio even when the user provided information is incomplete.” Appeal Brief 12 (citing Specification ¶¶ 87–96; Figures 4, 5). Appellant argues, “in compliance with Data Engine and Core Wireless, the claimed approach improves the functioning or operation of a computer.” Appeal Brief 13 (citing “Data Engine Techs. LLC v. Google LLC, No. 2017-1135, 13–16 (Fed. Cir., Oct.

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9, 2015); Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc., 880 F.3d 1356, 1363 (Fed. Cir. 2018)").

Appellant relies upon 10 paragraphs from the Specification to support the assertion that the claimed system “provides a practical application of executing trades for an entire portfolio even when the user provided information is incomplete” without any specificity to the location of the support within the 10 paragraphs. *See* Appeal Brief 12. We do not find Appellant’s arguments persuasive because it is not clear how providing complete user provided information integrates the recited claimed abstract idea into a practical application. *See* 2019 Revised Guidance at 54, 55. Further, 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.”). Claim 1’s method does not recite any improvement to the claimed computing system, instead the method only uses the computing system to calculate efficient trade offsets. *See* Specification ¶ 8.

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

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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.).

Further, in *Data Engine Technologies*, the court held:

When considered as a whole, and in light of the specification, representative claim 12 of the ’259 patent is not directed to an abstract idea. Rather, the claim is directed to a specific method for navigating through three-dimensional electronic spreadsheets. The method provides a specific solution to then-existing technological problems in computers and prior art electronic spreadsheets.

Data Engine Techs. LLC v. Google LLC, 906 F.3d 999, 1007–08 (Fed. Cir. 2018).

Accordingly, we do not find Appellant’s arguments persuasive because calculating efficient trade offsets is unlike patent-eligible claims directed to particular technical ways of displaying data such as the claimed user interface in *Core Wireless* and the claimed accessibility of electronic spreadsheets in *Data Engine Techs* because the claimed trade offsets do not improve the functioning of the processor. *See* 2019 Revised Guidance at 55.

Appellant contends, “Because the present claims are directed towards a particular approach for analyzing and executing a plurality of trades, Appellant submits that the present claims cannot be properly interpreted as preempting all applications or uses of an abstract idea.” Appeal Brief 16. We do not find Appellant’s reasoning persuasive because as the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice*, 573 U.S. at 216. However, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. As our reviewing court has explained, “[t]he Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability,” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 216). And, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.* Moreover, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the [*Alice/Mayo*] framework . . . , preemption concerns are fully addressed and made moot.” *Id.*; see also *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Additionally, we detect no additional element (or combination of elements) recited in Appellant’s representative claim 1 that integrates the judicial exception into a practical application. See 2019 Revised Guidance,

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Section III(A)(2). For example, Appellant’s claimed additional elements (e.g., memory with various modules, processor): (1) do not improve the functioning of a computer or other technology; (2) are not applied with any particular machine (except for a generic computer device); (3) do not effect a transformation of a particular article to a different state; and (4) are 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*, 566 U.S. at 72–73).

Appellant argues, “The Examiner has not made any rejections under 35 U.S.C. §§ 102 and 103 based on these particular limitations, which indicates that the above limitations are unconventional and non-routine. See Final Office Action at p. 2.” Reply Brief 7. We do not find Appellant’s argument persuasive because 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

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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).

Appellant also argues:

[T]he limitations of the present claims are specific to implementing the inventive functionality of the claimed approach and, therefore, cannot be considered conventional or routine. On this point, the Examiner has not cited any evidence that these particular limitations are well-known, conventional, or routine operations. See Memorandum - Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*) (April 19, 2018). Accordingly, the specific limitations cited in the present claims are different from, and provide advantages over, previous well-understood, routine and conventional devices employed in the field of computer trading platforms.

Appeal Brief 15.

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*^[6] Memorandum.^[7]

⁶ *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018).

⁷ 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>.

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

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.⁸

The Examiner determines, “The MPEP provides support that the additional limitations in the claim are directed to well-understood routine and conventional steps,” in particular limitations that “are claimed in a merely generic manner” (e.g., “Storing and retrieving information in memory”); “insignificant extra-solution activity”; and “[m]ere instructions to implement an abstract idea, or with the use of generic computer components.” Answer 16–17 (citing MPEP § 2106.05(d)). Further, the Examiner correctly notes that many of the limitations identified by Appellant are part of the abstract idea, not additional elements beyond the

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

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abstract idea. Answer 15–16; *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”). Accordingly, 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)(2)).

Further, we note in *BASCOM*⁹, 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 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 1 is distinguishable, as it recites an abstract-idea-based solution, that is, a method of calculating trade offsets in an efficient manner. *See generally* Specification. Therefore, we are not persuaded that the ordered combinations of steps in representative claim 1 provide an inventive concept. *See* 2019 Revised Guidance at 56. We find

⁹ *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

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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).

Accordingly, we conclude claims 1–3 and 5–8 are directed to fundamental economic principles or practices (including hedging, insurance, mitigating risk); 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 failing to recite limitations that amount to significantly more than the abstract idea itself. We sustain the Examiner’s § 101 rejection of claims 1–3 and 5–8.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 5–8	101	Eligibility	1–3, 5–8	

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