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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* BRAD HANDLER

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Appeal 2020-002322  
Application 12/856,025  
Technology Center 3600

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Before MICHAEL W. KIM, and JOSEPH A. FISCHETTI, and  
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–13, 16, 18, 19, and 21–24. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest is Bradley Handler. (Appeal Br. 3).

### CLAIMED SUBJECT MATTER

The Appellant's claimed invention relates to a method and system for authenticating a credit applicant and credit user to protect against identity fraud (Spec., para 2). Claim 24, reproduced below with the italics added, is representative of the subject matter on appeal.

24. A method performed by a computer system, the method comprising:
- performing operations*, within an authentication architecture, *to authorize a credit transaction based on renewed authentication information for a user*, the operations comprising:
    - receiving*, via a computer network comprising the Internet from one or more user devices, *data within the authentication architecture comprising information to establish a user authentication account, user authentication information, and a set of renewal rules established by the user*, the set of renewal rules comprising a plurality of conditions under which the user authentication information is transformed into renewed user authentication information, wherein the set of renewal rules are established by the user via a graphical user interface in a user access layer;
    - determining occurrence of one or more of the plurality of conditions in response to detecting one or more transactions* over the computer network comprising the Internet that are associated with the user authentication information being used a certain number of times or exceed a specified monetary limit;
    - and
    - transforming the user authentication information into the renewed user authentication information* in response to determining the occurrence of the one or more of the plurality of conditions by:
      - notifying*, via the computer network, *the user* via the graphical user interface *to renew the user authentication information*; and

*receiving, via the computer network, input from the user that renews the authentication information, wherein a user services layer is coupled to one or more memories of the one or more user devices and to at least one of one or more computer processors of the one or more user devices to implement the performing of the operations within the authentication architecture.*

#### THE REJECTION

The following rejection is before us for review:

Claims 1–13, 16, 18, 19, and 21–24 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

#### FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence<sup>2</sup>.

#### ANALYSIS

##### *Rejection under 35 U.S.C. § 101*

The Appellant argues that the rejection of claim 24 is improper because the claim is not directed to an abstract idea (Appeal Br. 6; Reply Br. 3–5). The Appellant also argues that the claim recites a “practical application” (Appeal Br. 10, 11). The Appellant argues further that the claim “transforms” the alleged abstract idea (Appeal Br. 11–16). The Appellant also argues that elements of the claim have not been shown to be well-understood, routine, or conventional (Appeal Br. 16, 17).

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<sup>2</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

In contrast, the Examiner has determined that the rejection of record is proper (Final Action 2–9; Ans. 3–6).

We agree with the Examiner. 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 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 Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* 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, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India

rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); 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 Supreme 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 Supreme 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.* (internal 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.”).

In January 2019, the published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the Guidance, 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); and
- (2) additional elements that integrate the judicial exception into a practical application, i.e., evaluate whether the claim “appl[ies], rel[ies] on, or use[s] 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.” (*see* Guidance, 84 Fed. Reg. at 54; *see also* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look 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.

*See* Guidance.

If the claim is “directed to” an abstract idea, we turn to the second step 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 (citation 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.*

The Specification at paragraph 2 states that the invention generally relates to a method and system for authenticating a credit applicant and credit user to protect against identity fraud. Here, the Examiner has determined that the claim sets forth “authenticating a credit applicant and credit user to protect against identity fraud by establish[ing] a user authentication account and a set of rules under which a user authentication

information is renewed” and is a method of organizing human activity and an abstract concept (Final Action 3). We substantially agree with the Examiner. We determine that the claim sets forth the subject matter in italics above which describes the concept of: [1] “performing operations . . . to authorize a credit transaction based on renewed authentication information for a user”; [2] “receiving . . . data within the authentication architecture comprising information to establish a user authentication account, user authentication information, and a set of renewal rule . . . established by the user”; [3] “determining occurrence of one or more of the plurality of conditions in response to detecting one or more transactions”; [4] “transforming the user authentication information into the renewed user authentication information”; [5] “notifying . . . the user via the graphical user interface to renew the user authentication information”; [6] “receiving . . . input from the user that renews the authentication information” which is drawn to a method of authorizing a credit transaction based on renewed authentication information for a user by receiving rules established by the user and determining if those rules are met and notifying the user to then renew the authentication information which is a method of organizing human activity and fundamental economic practice, i.e. a judicial exception. The Appellant at page 9 of the Appeal Brief has cited to *SRI International, Inc. v. Cisco Systems*, 930 F.3d 1295 (Fed. Cir. 2019) but the claims in that case differ from the claim at issue here. Here, the claimed method uses a set of renewal rules to notify a user to renew authentication information and is drawn to the abstract concept identified above.

We next determine whether the claim recites additional elements in the claim to integrate the judicial exception into a practical application. *See*



Guidance, 84 Fed. Reg. at 54–55. The Revised Guidance references the MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) §§ 2106.05(a)–(c) and (e)–(h).

The Appellant has argued at page 11 of the Appeal Brief that the claim addresses an improved approach to computer security that represents a practical application. We disagree with this contention. Here, the claims do not improve computer functionality, improve another field of technology, utilize a particular machine, or effect a particular physical transformation. Rather, we determine that nothing in the claims imposes a meaningful limit on the judicial exception, such that the claims are more than a drafting effort to monopolize the judicial exception.

For example, in the claim, the additional elements beyond the abstract idea are the recited “computer network,” “computer processors” and associated “user devices,” and “computer memories.” These are described in the Specification as generic computer components (Spec., paras. 35. 36) The claimed limitations of “performing”, “receiving”, “determining”, “transforming the . . . information”; and “notifying” here “do not purport to improve the functioning of the computer itself,” do not improve the technology of the technical field, and do not require a “particular machine.” Rather, they are performed using generic computer components. Further, the claim as a whole fails to effect any particular transformation of an article to a different state. The recited steps in the claim fail to provide meaningful limitations to limit the judicial exception. In this case, the claim merely uses the claimed computer elements as a tool to perform the abstract idea.

Considering the elements of the claim both individually and as “an ordered combination” the functions performed by the computer system at

each step of the process are purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. Thus, the claimed elements have not been shown to integrate the judicial exception into a practical application as set forth in the Revised Guidance which references the MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) §§ 2106.05(a)–(c) and (e)–(h).

Turning to the second step of the *Alice* and *Mayo* framework, we determine that the claim does not contain an inventive concept sufficient to “transform” the abstract nature of the claim into a patent-eligible application.

The Appellant cites to *DDR Holdings, LLC v. Hotels, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) and argues that the claim is “rooted in computer technology” (App. Br. 11). We disagree as the Appellant has not shown how the claimed subject matter is rooted in technology given that the Specification describes only the use of generic computer equipment used in routine, conventional, and generic manner. The Appellant at page 13 of the Appeal Brief has also cited to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) to show that the claim is not abstract, but the claims in that case were not similar in scope to those here and were in contrast directed to a self-referential data table.

Considering the claim both individually and as an ordered combination fails to add subject matter beyond the judicial exception that is not well-understood, routine, and conventional in the field. Rather the claim uses well-understood, routine, and conventional activities previously known in the art and they are recited at a high level of generality. The Specification at paragraphs 35 and 36, for example, describes using conventional computer components such as a desktop computer and handheld computing

devices in a conventional manner. The claim specifically includes recitations for computers to implement the method but these computer components are all used in a manner that is well-understood, routine, and conventional in the field. Here, the claimed generic computer components which are used to implement the claimed method are well understood, routine, or conventional in the field. The Specification at paragraphs 35 and 36 for instance describe using general purpose computer components which are known to perform the claimed functions in a well-understood manner. Here, the claim has not been shown to be “significantly more” than the abstract idea.

We further disagree with the Appellant that the asserted claims are akin to the claims found patent eligible in *Finjan, Inc. v. Blue Coat Systems, Inc.*, 879 F.3d 1299 (Fed. Cir. 2018), because in *Finjan*, the court held that claims to a “behavior-based virus scan” were a specific improvement in computer functionality and hence not directed to an abstract idea. *Finjan*, 879 F.3d at 1304. (Appeal Br. 15–16). The claimed technique of scanning enabled “more flexible and nuanced virus filtering” and detection of potentially dangerous code. *Id.* This was done by “scanning a downloadable and attaching the results of that scan to the downloadable itself in the form of a ‘security profile.’” *Id.* at 1303. The security profile included the information about potentially hostile operations produced by a “behavior-based” virus scan, as distinguished from traditional, “code-matching” virus scans that are limited to recognizing the presence of previously-identified viruses, typically by comparing the code in a downloadable to a database of known suspicious code. *Id.* at 1304. This behavior-based scan resulted in a new type of file that when attached to a

downloadable file, and allowed the computer to do more to protect itself than in the past.

In contrast, the instant claims present no such new type of processing to create a security profile using virus filtering. Instead, the claims use conventional data processing to apply a set of renewal rules to notify a user to renew authentication information. This may improve fraud prevention efforts, but this is not an improvement to the computer.

Appellant's other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive of error. *See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”).

For these above reasons the rejection of claim 24 is sustained. The remaining claims are directed to similar subject matter for which the same arguments have been presented and the rejection of these claims is sustained as well.

#### CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1–13, 16, 18, 19, and 21–24 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-13, 16, 18, 19, and 21-24	101	Eligibility	1-13, 16, 18, 19, and 21-24	

TIME PERIOD FOR RESPONSE

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

AFFIRMED