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Paper 46
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTLAKE SERVICES, LLC,
Petitioner,

v.

CREDIT ACCEPTANCE CORP.,
Patent Owner.

Case CBM2014-00176
Patent 6,950,807 B2

Before JUSTIN T. ARBES, DAVID C. McKONE, and GREGG I. ANDERSON, *Administrative Patent Judges.*

McKONE, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Westlake Services, LLC d/b/a Westlake Financial Services ("Petitioner") filed an Amended Petition (Paper 5, "Pet.") to institute a covered business method patent review of claims 1–42 of U.S. Patent No. 6,950,807 B2 ("the '807 patent"). Credit Acceptance Corp. ("Patent Owner") filed a Preliminary Response (Paper 14, "Prelim. Resp."). Pursuant to 35 U.S.C. § 324, in our Decision to Institute, we instituted this proceeding as to claims 10–12 and 14–33 on the asserted ground that the challenged claims are directed to non-statutory subject matter, under 35 U.S.C. § 101. Paper 15 ("Dec.").

After the Decision to Institute, Patent Owner filed a Patent Owner Response (Paper 27, "PO Resp."), and Petitioner filed a Reply to the Patent Owner Response (Paper 35, "Reply"). An oral hearing was held on September 10, 2015. Paper 44 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6(c). This Decision is a final written decision under 35 U.S.C. § 328(a) as to the patentability of the challenged claims. Based on the complete record, Petitioner has demonstrated, by a preponderance of the evidence, that claims 10–12 and 14–33 are unpatentable.

B. Related Matters

Petitioner has been sued for infringement of the '807 patent in *Credit Acceptance Corp. v. Westlake Services LLC*, No. 2:13-cv-01523-SJO-MRW (C.D. Cal.). Pet. 2; Paper 8, 2. On August 24, 2015, the District Court

granted Patent Owner's motion to dismiss the district court case voluntarily with prejudice. Ex. 2004.

The Board previously conducted a covered business method patent review of claims 1–9, 13, and 34–42 of the '807 patent in *Westlake Services, LLC v. Credit Acceptance Corp.*, Case CBM2014-00008 ("CBM-008"). In CBM-008, in a Final Written Decision (CBM-008, Paper 66 ("008-FWD")), we determined that claims 1–9, 13, and 34–42 of the '807 patent are unpatentable under 35 U.S.C. § 101. Patent Owner did not appeal that determination.

C. The Asserted Ground

We instituted this proceeding on Petitioner's ground challenging claims 10–12 and 14–33 as ineligible for patenting under 35 U.S.C. § 101. Dec. 30.

D. CBM-008

In CBM-008, Petitioner petitioned for review of claims 1–42 of the '807 patent. CBM-008, Paper 8. We instituted a trial as to claims 1–9, 13, and 34–42. CBM-008, Paper 30. After our institution decision, and after Petitioner had filed a request for rehearing on other grounds, the Supreme Court issued *Alice Corp. Pty. LTD v. CLS Bank International*, 134 S. Ct. 2347 (2014), and vacated *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335 (Fed. Cir. 2013) (*Ultramercial II*) (*see WildTangent, Inc. v. Ultramercial, LLC*, 134 S. Ct. 2870 (2014)). We denied Petitioner authorization to file a second rehearing request to address *Alice*, but noted that Petitioner was free

to file another Petition challenging the claims of the ’807 patent not addressed in CBM-008. CBM-008, Paper 40, 3.

Petitioner then filed the Petition in this proceeding. Subsequent to the filing of the Petition, the Federal Circuit, on remand from the Supreme Court, decided *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014) (*Ultramercial III*), finding the claims at issue ineligible for patent protection—an opposite result to what had been determined in *Ultramercial II*. On March 24, 2015, after *Ultramercial III* and the institution of this proceeding (as to claims 10–12 and 14–33), we issued the 008-FWD, finding claims 1–9, 13, and 34–42 unpatentable under 35 U.S.C. § 101, a decision that Patent Owner declined to appeal.

II. ANALYSIS

A. The ’807 Patent (Ex. 1001)

The ’807 patent relates to a method for facilitating the purchase of products on credit and a system for implementing such a method, as may be employed in the sale of automobiles and other vehicles, for example. Ex. 1001, 1:5–9. The invention is not limited to vehicle sales and also may be applied to the sale of any products for which a customer desires to finance the transaction. *Id.* at 1:9–12.

The ’807 patent describes a system and method for providing financing to the customers of a dealer to allow the customers to purchase products from the dealer’s inventory. *Id.* at 3:27–30. The system, implementing the method, generates prospective financing packages for every item in the dealer’s inventory. *Id.* at 3:30–32.

Figure 6 is reproduced below:

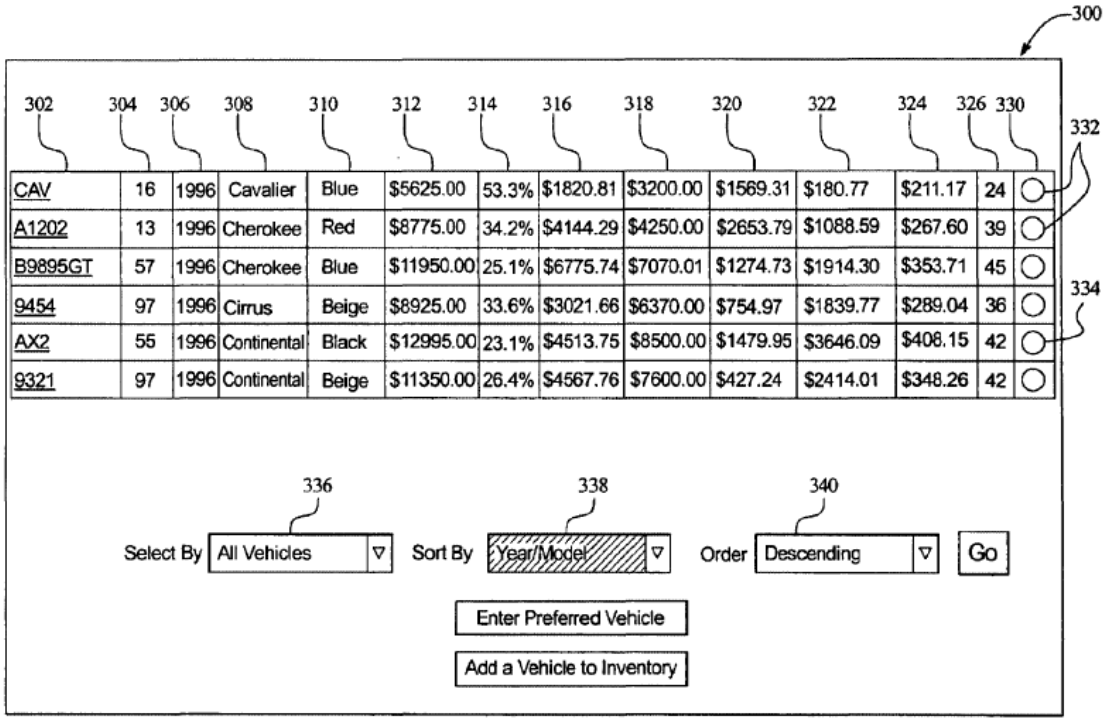


FIG. 6

Figure 6 is an example of a screen displaying several financing packages. *Id.* at 5:1–2. According to this example, a financing package includes a set price a customer would agree to pay for a particular vehicle (selling price in column 312), a down payment the customer would pay (column 314 shows down payment percentages), and an agreement by the customer to pay the rest of the sale price with interest in a series of monthly payments (column 324 shows monthly payment amounts and column 326 shows the number of months in the financing term). *Id.* at 8:40–45, 9:26–31. A party extending financing agrees to pay an "advance amount" when a sale is completed (column 316). "[T]he advance amount is determined by the party extending financing based on the customer's credit score, the dealership's past collection history, the particular vehicle being considered and other factors." *Id.* at 9:21–24. As can be seen, the advance amount and

the down payment together can be less than the sale price—in other words, the lender might not agree to loan the full purchase price to the customer. The dealer's cost for each vehicle is shown in column 318 of Figure 6.

The patent describes two types of profit realized by the dealer. First, "[t]he front-end profit is the actual profit that the dealer realizes immediately upon closing a sale with the customer," and "[p]ut simply . . . is equal to the down payment amount plus the advance amount minus the dealer's costs." *Id.* at 8:53–62. This is shown in column 320 of Figure 6. *Id.* at 9:29. Second, "[t]he back-end profits are generated by the monthly payments received from the customer in satisfaction for the outstanding obligation." *Id.* at 8:63–65. As explained above, the purchase price might be higher than the down payment plus the advance amount. In this case, the dealer receives a share of the customer's monthly payments. *Id.* at 8:65–67. According to the example in the patent, the dealer's share of the monthly payments first is credited towards paying back the advance amount. *Id.* at 9:2–4. The dealer's back-end profits can be estimated (column 322 of Figure 6) by "multiplying the total payment amount by the dealer's percentage share of collections and subtracting the advance amount" and, if a more realistic estimate is desired, by taking into account an expected payment collection rate. *Id.* at 9:11–17.

Claim 14, reproduced below, is illustrative of the claimed subject matter:

> 14. A system for providing guaranteed financing to a customer for allowing the customer to purchase a product from an inventory of a dealer, the system comprising:
>
> a financing package generating unit including a database configured to store the inventory of the dealer

> including a plurality of individually priced items, and a calculation unit;
>
> a user terminal adapted to accept credit information from the customer and further adapted to transmit the credit information over a network; and
>
> a server configured to receive credit information through the network, and to access the financing package generating unit, which retrieves a credit report related to the customer, and calculates a credit score for the customer based on the credit report and the credit information, the financing package generating unit further generating financing packages for each of the individually priced items in the database, the financing packages including a front-end profit calculated based on the credit score, payment of an advance amount to the dealer in furtherance of the sale, and dealer costs, the server being[] further configured to transmit the financing packages to the user terminal for presentation to the dealer for immediate offer for sale to the customer.

B. Whether the '807 Patent is a Covered Business Method Patent

In the Decision to Institute, at 8–9, we determined that the '807 patent is a covered business method patent. We also made that determination in CBM-008, in the Final Written Decision, at 19–20. Patent Owner did not appeal that decision. Patent Owner also does not contest the determination in its Patent Owner Response. Thus, we are presented with no reason to change our original determination.

C. Claim Construction

We interpret claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which

they appear. *See* 37 C.F.R. § 42.300(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278 (Fed. Cir. 2015). Claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

1. Terms Construed in CBM-008

As summarized in the table below, in the 008-FWD, we construed several terms that are applicable to the claims at issue in this proceeding:

Claim Term	Construction from 008-FWD
"front-end profit" (claims 14, 26, and claims that depend from claim 1)	"The down payment amount plus the advance amount minus the dealer cost." 008-FWD, 7.
"advance amount" (claims 14, 25, and claims that depend from claim 1)	"The amount the party extending the financing agrees to pay the dealer when the sale is complete." 008-FWD, 8.
"database" (claims 14, 25, and claims that depend from claim 1)	"Electronic collection of data stored on and/or accessible by a computer." 008-FWD, 9.

In the PO Response, Patent Owner proposes a narrower construction of "advance amount." Although it does not propose an express construction, Patent Owner argues:

> An advance amount is only a portion of what the lender will ultimately pay to the dealer through the collection process, and is distinct from the prior art situation in which the dealer receives the full balance from the lender immediately, placing the burden on the lender to collect the monthly payments from the customer. Thus, an advance amount is not the sales price minus the dealer's costs plus the down payment.

PO Resp. 21 (emphasis omitted). Our construction in the 008-FWD, by its terms, does not limit an advance amount to less than the sales price minus the buyer's down payment. Rather, the lender might advance the full balance not paid up front by the buyer. Patent Owner does not identify any disclosure in the Specification defining or describing an advance amount. Nevertheless, according to Patent Owner, because the '807 patent describes the invention in terms of the dealer receiving a share of all customer payments received over time, an advance amount must be less than the full balance due to the dealer. *Id.* at 22.

As explained in the 008-FWD, the Specification describes an advance amount as the amount of money a lender agrees to pay to the dealer. Ex. 1001, 8:45–46. "[T]he advance amount is determined by the party extending financing based on the customer's credit score, the dealership's past collection history, the particular vehicle being considered and other factors." *Id.* at 9:21–24. Although the advance amount could be less than the sales price minus the down payment, the Specification does not require that it be so.

In any case, Patent Owner has since accepted our construction of "advance amount" and has chosen not to contest it in this proceeding. Tr. 28:1–12. We maintain that construction on the full record of this proceeding.

The parties do not argue in this proceeding for different constructions of "front-end profit" and "database." We maintain these constructions on the full record of this proceeding.

2. Terms That Do Not Need Construction

Additionally, in the 008-FWD, we determined that the following terms, also relevant to claims at issue in this proceeding, required no express construction: "receiving information related to a database," "receiving information from the customer," "calculating," "determining," "presenting . . . to the dealer," "automatically recalculated," "transmitted," "generating," and "selectable criteria." 008-FWD, 10–18.

In the Petition, Petitioner addressed several of these terms, contending, *inter alia*, that "receiving information related to a database of a dealer's inventory," "receiving information from the customer," "calculating a credit score for the customer based at least in part on the information gathered from the customer," and terms including "determining" are indefinite under 35 U.S.C. § 112, second paragraph. Pet. 32–33, 39, 41. We declined to institute on that ground, concluding that the Petition's showing was unpersuasive. Dec. 27. The parties propose no other constructions for these terms. On the complete record of this proceeding, we maintain our decision not to construe these terms expressly.

3. Additional Terms Construed in the Decision to Institute

In the Decision to Institute, we preliminarily construed "calculation unit" to mean "a computer component configured to calculate" and "financing package generating unit" to mean "a computer component that generates financing packages and contains a database and a calculation unit." Dec. 7. In the Petition, Petitioner contends that these terms are indefinite. Pet. 36. As stated above, we declined to institute on the asserted ground of indefiniteness. Dec. 27. The parties do not dispute further these

constructions in the Patent Owner Response and Reply. On the complete record, we maintain these constructions.

D. Asserted Ground under 35 U.S.C. § 101

Petitioner alleges that each of the challenged claims is ineligible for patenting under Section 101.

Section 101 establishes that patent protection may be obtained for "new and useful process[es], machine[s], manufacture[s], or composition[s] of matter." 35 U.S.C. § 101. A "process" is defined as a "process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material." 35 U.S.C. § 100(b). The Supreme Court has long held that § 101 contains an implicit exception for "[l]aws of nature, natural phenomena, and abstract ideas." *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013).

In *Alice*, the Supreme Court set forth a framework for distinguishing claims directed to abstract ideas from those directed to patent-eligible applications of those abstract ideas. According to that framework, we first determine whether a claim is directed to an abstract idea. 134 S. Ct. at 2355. Second, "we consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1297–98 (2012)).

1. Whether the claims are directed to an abstract idea

The first prong of the *Alice* test requires us to determine whether the challenged claims are directed to an abstract idea. *Alice*, 134 S. Ct. at 2355.

According to the Federal Circuit, "determining whether the section 101 exception for abstract ideas applies involves distinguishing between patents that *claim the building blocks of human ingenuity*—and therefore risk broad pre-emption of basic ideas—and patents that integrate those building blocks into something more, enough to transform them into specific patent-eligible inventions." *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1332 (Fed. Cir. 2015) (emphasis added); *accord id.* at 1333–34 ("It is a *building block*, a *basic conceptual framework* for organizing information . . . ." (emphasis added)). This is similar to the Supreme Court's formulation in *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (emphasis added), noting that the concept of risk hedging is "a *fundamental economic practice* long prevalent in our system of commerce."

To distinguish between the types of inventions directed to building blocks, or basic conceptual frameworks, and those directed to patent-eligible applications of such building blocks, the Federal Circuit has been guided by examples from previous cases. For instance, the *Versata* Court found it "helpful . . . to highlight briefly a few salient points [from previous cases] as a means of comparison to the invention and claims" at issue in *Versata*. 793 F.3d at 1332–33, comparing the claims to those at issue in:

> *Alice* (abstract idea of intermediated settlement);
>
> *Parker v. Flook*, 437 U.S. 584 (1978) (mathematical formula for computer alarm limits in a catalytic conversion process);

Gottschalk v. Benson, 409 U.S. 63 (1972) (mathematical algorithm for converting binary-coded decimal numerals into pure binary form);

Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n, 776 F.3d 1343 (Fed. Cir. 2014) (abstract idea of collecting data from hard-copy documents, recognizing certain information within the collected data, and storing that information in memory);

Ultramercial III (abstract idea of using an advertisement as an exchange or currency);

buySAFE, Inc. v. Google, Inc., 765 F.3d 1350 (Fed. Cir. 2014) (abstract idea of creating a contractual relationship);

and *Bancorp Services, L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266 (Fed. Cir. 2012) (abstract idea of managing a stable value life insurance policy),

and contrasting the claims with those at issue in:

Diamond v. Diehr, 450 U.S. 175 (1981) (computer-implemented process for curing rubber, using a known equation in a process to solve a technical problem in conventional industry practice); and

DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245 (Fed. Cir. 2014) (claims reciting a solution that was necessarily rooted in computer technology to overcome a problem specifically arising in the realm of computer networks).

Taking a similar approach in *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015), the Federal Circuit reasoned that the "concept of 'offer based pricing' is similar to other 'fundamental economic concepts' found to be abstract ideas by the Supreme Court and this court" (comparing the claims at issue to those in *Alice*, 134 S. Ct. at

2357; *Bilski* (abstract idea of risk hedging); *Ultramercial III*; *Content Extraction*; *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336 (Fed. Cir. 2013) (abstract idea of generating tasks in an insurance organization)). In another example, in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015) (emphasis added), the Federal Circuit concluded that claims directed to tracking financial transactions to determine whether they exceed a pre-set spending limit were abstract because they were "not meaningfully different from the ideas found to be abstract in other cases before the Supreme Court and our court *involving methods of organizing human activity*." *See also DDR Holdings*, 773 F.3d at 1256 ("Although many of the claims [in previous cases] recited various computer hardware elements, these claims in substance were directed to nothing more than *the performance of an abstract business practice* on the Internet or using a conventional computer. Such claims are not patent-eligible." (emphasis added)). The Supreme Court also has looked to examples from prior cases to discern the abstract from the patent-eligible. *See, e.g.*, *Alice*, 134 S. Ct. at 2357 (comparing the claims to those in *Bilski* and concluding that there was "no meaningful distinction between the concept of risk hedging in *Bilski* and the concept of intermediated settlement at issue" in *Alice*).

From these cases, it is clear that claims directed simply to business practices, methods of organizing human activity, and economic relations, even if practiced on a computer or the Internet, may be directed to abstract ideas (subject, of course, to the second prong of the *Alice* framework). *See buySAFE*, 765 F.3d at 1354 ("In simultaneously rejecting a general business-method exception to patent eligibility and finding the hedging

claims invalid, moreover, *Bilski* makes clear that the recognition that the formation or manipulation of economic relations may involve an abstract idea does not amount to creation of a business-method exception. The required section 101 inquiry has a second step beyond identification of an abstract idea. If enough extra is included in a claim, it passes muster under section 101 even if it amounts to a 'business method.'").

Petitioner contends that independent claims 1,[1] 14, and 25 are directed to the abstract idea of "providing financing," and that this concept is a "fundamental economic practice." Pet. 21. In CBM-008, we concluded that claim 1 is directed to the abstract idea of "processing an application for financing a purchase." 008-FWD, 26.

Claim 1 recites receiving information, including sale prices and dealer costs, for items in a dealer's inventory; receiving down payment information from a customer wishing to buy a product from the dealer; calculating a credit score for the customer; determining how much a lender will advance to the dealer (advance amount) for each product in the inventory (which need only include two products); calculating profits for the inventory items[2] (using arithmetic based on the advance amount, dealer cost, and down payment); and presenting a financing package (with unspecified information) to the dealer for each product in the inventory. The underlying concept of claim 1, when viewed as a whole, simply is to receive information from a customer's credit application, process that information,

[1] Claim 10, at issue in this case, depends from claim 1. Thus, our analysis of claim 10 starts with claim 1.

[2] Claim 1 does not recite using such profit information. Claim 12 later recites sorting the financing packages based on selectable criteria, which could be profit.

and present the processed information as potential financing packages to the dealer. Rephrased, this is the abstract idea of "processing an application for financing a purchase."

Claim 10 depends from claim 1 and adds providing generic computer structure for performing the steps of claim 1 (a "user terminal" for entering customer information; and a "server" connected to the user terminal "via a network," for receiving information, accessing the database, performing claim 1's arithmetic to generate financing packages, and transmitting the financing packages to the user terminal). Thus, claim 10 recites the same abstract concept as recited in claim 1, performed with generic computer components.

Claim 14 recites a system, with generic computer components, to collect information from a customer, retrieve a credit report, calculate a credit score, and generate financing packages for each item of a dealer's inventory. A financing package includes an amount that a lender will contribute (an advance amount) and a front-end profit the dealer will make (calculated based on the customer's credit score, the sale price, down payment, advance amount, and vehicle cost). Claim 25 is similar to claim 14, reciting generic computer components ("database," "user terminal," "server," and "network") for storing inventory information, receiving and communicating financial information about a customer, and generating and sending financing packages for each product in the inventory. Claims 14 and 25 also recite the same abstract concept recited in claim 1, albeit implemented using generic computer components. Claims 14 and 25 also are directed to the abstract idea of processing an application for financing a purchase.

We conclude that processing an application for financing a purchase is a method of organizing human activity, or the performance of an abstract business practice. As we found in CBM-008, the '807 patent describes processing a financing application as routine and conventional. 008-FWD, 26–27 ("Specifically, the '807 patent describes processing a financing application as: a customer completing a credit application; obtaining financing from a financing institution; the customer providing a down payment and signing a promissory note to the dealer; and the financing institution paying the dealer the balance for the purchase after applying the down payment. [Ex. 1001] at 1:33–2:14. If the financing is not completed, the process is repeated. *Id.* at 2:15–50."). We note that processing an application for financing a purchase is a mere building block of human ingenuity, similar to the building blocks identified by the Supreme Court and the Federal Circuit. *Cf. Alice* (abstract idea of intermediated settlement); *Bilski* (abstract idea of risk hedging); *Content Extraction* (abstract idea of collecting data from hard-copy documents, recognizing certain information within the collected data, and storing that information in memory); *Ultramercial III* (abstract idea of using an advertisement as an exchange or currency); *buySAFE* (abstract idea of creating a contractual relationship); *Bancorp Services* (abstract idea of managing a stable value life insurance policy).

Indeed, as we explained in the 008-FWD, at 33, the challenged claims are not meaningfully different from those found non-statutory in *DealerTrack, Inc. v. Huber*, 674 F.3d 1315 (Fed. Cir. 2012). In *DealerTrack*, the claims at issue essentially recited using a computer to receive loan application data from one source, selectively forward the data to

remote funding sources, and forward reply data to the first source. 674 F.3d at 1333. The Federal Circuit determined that this was the abstract concept of processing information through a clearinghouse, notwithstanding the recitation of a generic computer. *Id.* The idea of claims 10, 14, and 25 is similarly abstract. Likewise, the challenged claims are not meaningfully different from those recently found abstract (despite recitations of generic computer components) in *Mortgage Grader, Inc. v. First Choice Loan Services*, 2015-1415 (Fed. Cir. Jan. 20, 2015), slip. op at 15 ("The series of steps covered by the asserted claims—borrower applies for a loan, a third party calculates the borrower's credit grading, lenders provide loan pricing information to the third party based on the borrower's credit grading, and only thereafter (at the election of the borrower) the borrower discloses its identity to a lender—could all be performed by humans without a computer.").

Patent Owner argues that the challenged claims recite "specific methods and systems for providing financing in a particular manner that cannot be accurately captured in a single abstract idea or fundamental economic practice." PO Resp. 7. Specifically, Patent Owner argues that the claims recite "tangible, physical steps," giving examples such as "retrieves a credit report," recited in claim 14, and "transmit . . . to the user terminal over the network for display," recited in claim 10. *Id.* We are not persuaded, as we view such data gathering and display steps as the type of post-solution activity that the courts routinely have found insignificant. *See Alice*, 134 S. Ct. at 2350; *see also In re Bilski*, 545 F.3d 943, 963 (Fed. Cir. 2008) ("This court and our predecessor court have frequently stated that adding a data-

gathering step to an algorithm is insufficient to convert that algorithm into a patent-eligible process.").

Patent Owner contends that calculating advance amounts for each item in an inventory is integral to the solution itself, not mere post-solution activity. PO Resp. 7–8. Patent Owner further contends that "the specifically-configured computer components are not simply for show - the physical components (server, terminal, network, database, calculation unit) are core limitations because they are necessary to effectively practice the invention," and, thus, "the claims as a whole are more akin to a patent-eligible physical process." *Id.* at 8–9. These arguments more properly are directed to *Alice*'s second prong. Indeed, Patent Owner reiterates these arguments, in more detail, when addressing the second prong of the *Alice* framework. We address these arguments in Section II.D.2 below.

Patent Owner appears to contend that the Supreme Court's use of phrases such as "conventional," "routine," and "fundamental" in characterizing abstract ideas imports a novelty/nonobviousness requirement into the statutory subject matter analysis. PO Resp. 7–8 n.2; *see also* Tr. 31:5–32:8 ("Are we really talking 102, or are we talking 101, but when the question is asked, is something fundamental, or is something a basic enterprise or a building block of science, what you want to do is you want to look at the whole claim and to see what it's claiming, to see if you find that elsewhere, and you can say, no, what they are, this particular thing was done in the past and now they're just doing it on a computer. Or this particular thing has been done since time immemorial."). Patent Owner reiterates this argument when addressing the second prong of the *Alice* framework, contending that the concept of an "advance amount," as recited in the

challenged claims, "is distinct from the prior art situation in which the dealer receives the full balance from the lender immediately." *Id.* at 21. Patent Owner relies on this purported novelty to argue that "the calculation of advance amounts for every item in inventory as described in the '807 Patent does not constitute routine or conventional practice." *Id.* at 22.

We do not view Section 101 as including a novelty/obviousness requirement. To be sure, the Court in *Alice*, endorsing language used in *Bilski*, concluded that the concept of intermediated settlement is "a fundamental economic practice long prevalent in our system of commerce." *Alice*, 134 S. Ct. at 2356 (quoting *Bilski*, 561 U.S. at 611). Nevertheless, we view the Supreme Court's description of an economic practice as "long prevalent" to be an example of a fundamental economic practice rather than an implied novelty requirement. Indeed, the *Bilski* court made clear that Section 101 "is only a threshold test," and novelty and nonobviousness are additional requirements that are evaluated under Sections 102 and 103. 561 U.S. at 602.

Additional Supreme Court precedent supports this view. In *Flook*, in order to evaluate whether additional aspects of a claim to a mathematical algorithm added an inventive concept, the Supreme Court treated the mathematical algorithm "as if the principle or mathematical formula were well known" and proceeded to evaluate the rest of the claim. 437 U.S. at 592. The Court, however, did not state that a fundamental mathematical algorithm must be something that was long-standing or well-known. "[T]he novelty of the mathematical algorithm is not a determining factor at all." *Id.* at 591. Instead, "[w]hether the algorithm was in fact known or unknown at the time of the claimed invention, as one of the 'basic tools of scientific

and technological work,' it is treated as though it were a familiar part of the prior art." *Id.* at 591–92 (quoting *Benson*, 409 U.S. at 67). According to the Court, basic tools of scientific work are not ineligible because they are old; rather, "they are not the kind of 'discoveries' that the statute was enacted to protect." *Id.* at 593. The *Flook* court was clear that "[t]he obligation to determine what type of discovery is sought to be patented must precede the determination of whether that discovery is, in fact, new or obvious." *Id.*

The Court reiterated this in *Diehr*, when it explained that "[t]he 'novelty' of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter." 450 U.S. at 188–189. When viewed in the context of these cases, we read the Court to say that fundamental economic concepts, by themselves, are examples of the basic tools, or building blocks, of innovation that Section 101 is not intended to protect. They are considered to be available to the public, absent a showing of the incorporation of the fundamental economic concept into a machine or method that amounts to something "significantly more." *Alice*, 134 S. Ct. at 2355. As the Federal Circuit explained, "the addition of merely novel or non-routine components to the claimed idea [does not] necessarily turn[] an abstraction into something concrete." *Ultramercial III*, 772 F.3d at 715. Rather, "any novelty in implementation of the idea is a factor to be considered only in the second step of the *Alice* analysis." *Id.*

In sum, on the complete record, we are persuaded that the challenged claims are directed to the abstract idea of processing an application for financing a purchase.

2. Whether the claims recite an inventive concept

After determining that the challenged claims are directed to patent-ineligible abstract ideas, "we consider the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (internal quotation marks omitted). The Supreme Court has "described step two of this analysis as a search for an 'inventive concept'—i.e., an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself." *Id.* (internal 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].'" *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1297). "This requires more than simply stating an abstract idea while adding the words 'apply it' or 'apply it with a computer.' Similarly, the prohibition on patenting an ineligible concept cannot be circumvented by limiting the use of an ineligible concept to a particular technological environment." *Versata*, 793 F.3d at 1332 (citations omitted). To be clear, "[t]he introduction of a computer into the claims does not alter the analysis at *Mayo* step two." *Alice*, 134 S. Ct. at 2357; *accord id.* at 2358 ("[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. . . . Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of additional featur[e] that provides any practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea]

itself.") (citations and quotation marks omitted)). Otherwise, "an applicant could claim any principle of the physical or social sciences by reciting a computer system configured to implement the relevant concept." *Id.* at 2359. Moreover, the mere recitation of generic computer components performing conventional functions is not enough. *See id.* at 2360 ("Nearly every computer will include a 'communications controller' and 'data storage unit' capable of performing the basic calculation, storage, and transmission functions required by the method claims.").

Petitioner argues that the recitations of computer components in claims 10–12 and 14–33 are functional and generic and, as such, are not sufficient to transform the abstract ideas of those claims into patent-eligible inventions. Pet. 21–25; *see also DDR Holdings*, 773 F.3d at 1256 ("[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.").

Starting with claim 10, Petitioner argues that claim 10 simply recites applying the steps of claim 1 (which we determined in CBM-008 to be abstract) using generic, conventional computer components, recited in purely functional language. Pet. 22–23. We agree, and conclude that the generic computer components recited in claim 10 do not transform the nature of the claim such that claim 10, as a whole, recites an inventive concept. Claim 1, from which claim 10 depends, recites a database, which stores information about a dealer's inventory. Claim 10 adds to claim 1 a server for performing calculations, a user terminal for entering the information to be calculated, and a network for moving the information back and forth. As Petitioner argues, claim 10 provides no details as to the

specific structure of the computer components—the conventional components are recited generically, using purely functional language.

In essence, claim 10 recites applying the abstract idea of claim 1 using generic computer components. Put differently, claim 10 simply limits the method of claim 1 to a particular technological environment. This is analogous to the claims at issue in *Alice*, which generically recited a "data storage unit" and "computer," for example (detailed more fully in the Federal Circuit's opinion in *CLS Bank Int'l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1285–90 (Fed. Cir. 2013)), and those at issue in *Accenture*, 728 F.3d at 1344–45, which recited a "database," "client component," "server component," and "automated method," for example. In the words of the *Alice* Court, claim 10 essentially "[s]tat[es] an abstract idea while adding the words 'apply it with a computer.'" 134 S. Ct. at 2358. Nor does claim 10 purport to improve the functioning of the computer itself. *See buySAFE*, 765 F.3d at 1354; *compare with DDR Holdings*, 773 F.3d at 1258 ("In short, the claimed solution amounts to an inventive concept for resolving this particular Internet-centric problem, rendering the claims patent-eligible.").

Claims 14 and 25 fare no better. Like claim 10, each merely recites a generic database for storing inventory items, a generic server for performing routine calculations, a generic terminal for inputting the information that gets calculated, and a generic network for moving information back and forth. Pet. 24–26.

Patent Owner argues that the inventions of claims 1, 14, and 25 distinguish from routine or conventional practice by providing four advantages: "(1) ensur[ing] that financing will be made available for any customer; (2) involv[ing] the dealer in the collection process; (3) . . . not

[being] asset-specific; and (4) inform[ing] the dealer which items are most advantageous to sell." PO Resp. 12–13. According to Patent Owner:

> These "additional features" improve upon the simple act of processing an application for financing a transaction and produce a result that overrides the "routine and conventional sequence of events," by enabling the dealer to provide financing where none previously existed at the point of sale for any item in inventory.

Id. at 13.

The first two of these features purportedly are found in the "advance amount" recited in each of claims 1, 14, and 25. Patent Owner repeats or rephrases this argument several times in its Response:

> "Providing financing for every customer would normally create an enormous risk for financing sources, but under the '807 Patent, the needs of the *financing source* are addressed by shifting some risk from the financing source to the dealer. Risk shifting is accomplished, in turn, through advance amounts and other specific financing techniques, such as collateral pools and collateral pool capping, which convert the dealer into a stakeholder in the long-term collection process."[3] *Id.* at 14;
>
> "The use of advance amounts, in turn, ensures financing will be made available for every customer because it enables lenders to offload risk to dealers." *Id.* at 15;
>
> "[T]he advance amount element differentiates the claimed methods and systems from other forms of providing financing. . . . That dynamic of requiring the *dealer* to wait for months or years to receive full payment differentiates the claimed methods and systems from the vast majority of forms of providing financing in which the lender - and *only* the lender - must wait to be repaid. That dynamic is

[3] "Collateral pools" and "collateral pool capping" are concepts recited only in claims not at issue in this proceeding, such as claims 7–9.

> effected in the '807 Patent through the 'advance amounts' element . . . ." *Id.* at 28;
>
> "[B]y allowing lenders to offload risk to the dealer, lenders could feasibly structure viable financing packages for every item in a dealer's inventory for any customer." *Id.* at 32.

These arguments depend on an interpretation of "advance amount" as being less than the purchase price minus the down payment, leading to continued participation on the part of the dealer after the transaction has been completed and throughout the repayment period. *Id.* at 21–22 ("An advance amount is only a *portion* of what the lender will ultimately pay to the dealer through the collection process."), 28 ("[T]he advance amounts discussed in the '807 Patent are not the 'advances' that may be familiar to average consumers i.e., an amount given to the customer or the down-payments paid by the customer to the dealer. Rather, the claims require the particular financing technique of requiring advance amounts to be paid by the *lender* to the dealer, such that the dealer - in a break from conventional practice - must accept less than the full purchase price of the vehicle upfront and must wait to receive the balance of the sale.").

As explained in Section II.C.1 above, we construe "advance amount" to mean "the amount the party extending the financing agrees to pay the dealer when the sale is complete." Under this construction, an advance amount is not required to be less than the purchase price minus the down payment, and, thus, does not require risk sharing or continued dealer participation after the transaction. As explained above, Patent Owner has chosen not to contest this construction. Tr. 28:1–12. Thus, Patent Owner effectively has conceded that the recitation of an advance amount (and, thus, the purported features of guaranteed financing and dealer/lender risk

sharing) does not distinguish the claims from routine or conventional financial transactions.

Although claims 10, 14, and 25 do not require any risk sharing or participation in the financing on the part of the dealer, dependent claims 18 and 26 arguably do. Dependent claim 18 recites that "the dealer receives a share of the payments collected from the customer." Claim 26 recites both a front-end profit and a back-end profit.

Nevertheless, we conclude that claims 18 and 26 (and dependent claims 19–21) do no more than describe the abstract idea of processing an application for financing a purchase in which a lender and a seller both lend a portion of the purchase price, applied using generic computers. We are not persuaded that adding an additional fundamental economic concept, or building block, to an otherwise abstract idea (still implemented by the same generic computer components, recited in no more detail) transforms the claims into a patent-eligible application of the idea. As we found in the 008-FWD, at 30, "calculating an amount a lender will advance or an amount by which a dealer will profit from a transaction are routine, conventional activities for financial transactions." We also note that a similar type of risk hedging was determined to be abstract in *Bilski*. 561 U.S. at 612 ("These claims attempt to patent the use of the abstract idea of hedging risk in the energy market and then instruct the use of well-known random analysis techniques to help establish some of the inputs into the equation.").

Similarly, the addition, in claim 19, of an exemplary[4] risk sharing ratio (80%) does not somehow make the abstract idea patent-eligible.

[4] The Specification simply gives 80 percent as "an embodiment," without specifying a reason why 80 percent is significant. Ex. 1001, 8:67–9:2.

Cf. Content Extraction, 776 F.3d at 1349 ("[W]hile these claims may have a narrower scope than the representative claims, no claim contains an 'inventive concept' that transforms the corresponding claim into a patent-eligible application of the otherwise ineligible abstract idea."); *buySAFE*, 765 F.3d at 1355 ("The dependent claims' narrowing to particular types of such relationships, themselves familiar, does not change the analysis. This kind of narrowing of such long-familiar commercial transactions does not make the idea non-abstract for section 101 purposes.").

Moreover, even if risk sharing was not previously known or used in the financing transactions recited in the claims, that is not enough to transform an abstract idea into something patent-eligible. *See Ultramercial III*, 772 F.3d at 716 ("[E]ach of those eleven steps merely instructs the practitioner to implement the abstract idea with routine, conventional activities, which is insufficient to transform the patent-ineligible abstract idea into patent-eligible subject matter. That some of the eleven steps were not previously employed in this art is not enough—standing alone—to confer patent eligibility upon the claims at issue." (internal quotation marks omitted)). As explained in Section II.D.1 above, that risk sharing may help distinguish the claims over prior art, pursuant to Sections 102 and 103, is not determinative because eligibility under Section 101 is a threshold question that does not require showing anticipation or obviousness.

The third "additional feature" of the claims that Patent Owner contends lends an inventive concept to the claims is that the financing recited in the claims is not "asset-specific." PO Resp. 12. Patent Owner argues that "each claim requires *quickly* generating packages *for every item in an inventory*," which "means that the dealer does not have to submit

iterative applications for different assets and also informs the dealer which item will be most advantageous to sell." *Id.* at 15 (emphases added). Patent Owner repeats or rephrases this argument later in the Response:

> "Even methods and systems that do calculate front-end profits and advance amounts are not necessarily preempted if the amounts are not *calculated for each individual product* in the dealer inventory." *Id.* at 26 (emphasis added);
>
> "Absent the particular methods and systems of financing disclosed in the '807 Patent, it would not be economically feasible for a lender to *automatically generate financing packages for every item in inventory* because the risk would be too great." *Id.* at 29 (emphasis added).
>
> "It is akin to asking a lender to provide financing packages for multiple products *nearly instantaneously* - even if the customer is not interested in those products. That requirement is far from conventional, and clearly sets the claimed methods and systems apart as particular methods and systems for providing financing." *Id.* at 30 (emphasis added);
>
> "[S]pecifically configured computer components must be used to enable lenders to provide financing for *every item in inventory at the point of sale* because the quantity of data that must be *processed instantly* would exceed human capability." *Id.* at 30–31 (emphases added);
>
> "[W]ithout computers configured to communicate between lenders, dealers, and credit bureaus, dealers would not be able to *immediately* request, find, and obtain financing packages for *every item in inventory at the point of sale*." *Id.* at 32 (emphases added).

To summarize these arguments, Patent Owner contends that the claims require that a financing package be generated for each of multiple items in an inventory, automatically, simultaneously, and instantaneously, at the point of sale.

As to the requirement of generating financing packages for every item in a dealer's inventory, Patent Owner conceded, at the hearing in CBM-008, that this could be satisfied by generating financing packages for as little as two items. CBM-008, Paper 65, 44:7–20. We find that using a computer to perform the arithmetic for financial practices twice does not transform the otherwise abstract idea into something patent-eligible. *See Bancorp Services*, 687 F.3d at 1278 ("The computer required by some of Bancorp's claims is employed only for its most basic function, the performance of repetitive calculations, and as such does not impose meaningful limits on the scope of those claims.").

As to Patent Owner's arguments that the financing packages be generated "automatically," "simultaneously," "quickly," or "instantaneously," Patent Owner has not shown that the claims include temporal limitations. Claim 1 recites "presenting a financing package to the dealer for each individual product in the dealer's inventory for immediate offer for sale to the customer." Similarly, claim 14 recites "the server being[] further configured to transmit the financing packages to the user terminal for presentation to the dealer for immediate offer for sale to the customer" and claim 25 recites "transmit[ting] financing terms for each financing package to the user terminal via the network for presentation to the user for immediate purchase." In each instance, the word "immediate" modifies the offer for sale or purchase, rather than the timing of the presentation of financing packages to the dealer. According to the plain language of the claims, there is no order or timing in which financing packages must be presented to the dealer, so long as each package is for

immediate offer for sale or purchase when presented to the dealer. Patent Owner provides no persuasive argument or evidence to the contrary.

In any case, as explained above, Patent Owner has not argued persuasively that using a computer to perform computations repetitively transforms the abstract idea of claims 10, 14, and 25 into patent-eligible inventions. *See Bancorp Services*, 687 F.3d at 1278. Simply speeding up the process of generating financing packages using a computer does not provide an inventive concept. *See Intellectual Ventures I*, 792 F.3d at 1367 ("Nor, in addressing the second step of *Alice*, does claiming the improved speed or efficiency inherent with applying the abstract idea on a computer provide a sufficient inventive concept."); *CLS Bank*, 717 F.3d at 1286 ("[S]imply appending generic computer functionality to lend speed or efficiency to the performance of an otherwise abstract concept does not meaningfully limit claim scope for purposes of patent eligibility."); *Versata*, 793 F.3d at 1335 ("Examination of the claims—as a whole and in terms of each claim's limitations—reveals that the claims are not directed to improving computer performance and do not recite any such benefit. The claims are directed to price determination and merely use a computer to improve the performance of that determination—not the performance of a computer."). Patent Owner argues that, without the invention, a lender could not automatically generate financing packages for every item in an inventory "because the risk would be too great." PO Resp. 29. Patent Owner offers no persuasive evidence to support this argument.

As to the fourth "additional feature," that the invention informs the dealer which items are most advantageous to sell, Patent Owner argues that "[q]uickly generating packages for every item in inventory means that the

dealer does not have to submit iterative applications for different assets and also informs the dealer which item will be most advantageous to sell." *Id.* at 15; *see also id.* at 19 ("That combination offers advantages that did not exist in other computerized methods for processing applications because it enabled the dealer to offer *any* item to *any* customer *and* make informed choices about which items are best to offer.").

Patent Owner points to no language in claims 10, 14, and 25 directed to informing a dealer as to which items are most advantageous to sell. We conclude that this is not a requirement of claims 10, 14, and 25. Accordingly, Patent Owner's argument is unpersuasive as to these claims.

Claims 12, 23, and 33 each recite sorting the financing packages according to various selectable criteria, including "front-end profit" and "back-end profit." We conclude that the use of a generic computer to sort or tabulate data is not sufficient to transform the abstract ideas of claims 10, 14, and 25 into something patent-eligible. In any case, this is the type of insignificant post-solution activity that does not transform an unpatentable principle into a patent-eligible invention. *See Flook*, 437 U.S. at 590.

Patent Owner further argues that each of the challenged claims is eligible because it satisfies the "machine-or-transformation" test. PO Resp. 33. Patent Owner then proceeds to detail the specific computer components recited in the claims, most of which are discussed above. *Id.* at 33–37. We are not persuaded. For the reasons given above, the generic computer components recited in the claims do no more than limit the use of an abstract idea to a particular technological environment, which is insufficient under *Alice*. 134 S. Ct. at 2358.

Patent Owner argues that the challenged claims do not risk preempting an abstract idea because there are other ways of providing financing that do not fall within the scope of the claims. PO Resp. 25–26. As detailed above, the claims themselves recite abstract ideas and the generic computer structure recited for practicing those ideas is not sufficient to transform the claims into something patent-eligible. These are the types of claims that the Federal Circuit has warned "risk broad pre-emption of basic ideas." *Versata*, 793 F.3d at 1332. That the claims do not preempt all uses of the abstract ideas in all settings does not make the claims any less abstract. *See OIP Techs.*, 788 F.3d at 1362–63 ("And that 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.").

We have analyzed the remaining challenged claims, which Patent Owner does not argue separately, and conclude that, while narrower than the claims from which they depend, none of the remaining claims includes limitations sufficient to transform the abstract idea of claims 10, 14, and 25 into a patent-eligible invention. *See Content Extraction*, 776 F.3d at 1349; *buySAFE,* 765 F.3d at 1355.

In sum, Petitioner has shown, by a preponderance of the evidence, that each of the challenged claims recites an abstract idea, and the generic computer components recited in those claims do not transform the claims into patent-eligible applications of those ideas.

III. CONCLUSION

Petitioner has demonstrated, by a preponderance of the evidence, that claims 10–12 and 14–33 of the '807 patent are unpatentable as directed to non-statutory subject matter.

IV. ORDER

For the reasons given, it is

ORDERED that, based on a preponderance of the evidence, claims 10–12 and 14–33 of the '807 patent are held unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of it must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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