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Paper 32
Entered: March 23, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIZ INC. d/b/a PROVI,
Petitioner,

v.

JASON K. SMITH,
Patent Owner.

CBM2020-00029
Patent 10,467,585 B2

Before JUSTIN T. ARBES, STACEY G. WHITE, and FRANCES L. IPPOLITO, *Administrative Patent Judges.*

IPPOLITO, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 328

I. INTRODUCTION

TIZ Inc. d/b/a PROVI ("Petitioner") filed a Corrected Petition (Paper 11, "Petition" or "Pet.")[1] requesting covered business method ("CBM") patent review of claims 1–19 of U.S. Patent No. 10,467,585 B2 (Ex. 1001, "the '585 patent") under section 18 of the Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284, 331 (2011) ("AIA"). Patent Owner filed a Preliminary Response. Paper 12 ("Prelim. Resp."). Following authorization by the panel (Paper 13), Petitioner filed a Reply (Paper 14, "Reply") to Patent Owner's Preliminary Response and Patent Owner filed a Sur-reply (Paper 16, "Sur-reply") to Petitioner's Reply.

On March 25, 2021, based on the record before us at the time, we instituted a covered business method patent review of all challenged claims on all grounds alleged. Paper 17 ("Institution Decision" or "Dec."). The claims and ground in this proceeding are indicated in the table below.

Claims(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–19	101	Eligibility

Following Institution, Patent Owner filed a Response in opposition to the Petition (Paper 20, "PO Resp."). Petitioner filed a Reply in support of the Petition (Paper 21, "Pet. Reply"). Patent Owner filed a Sur-Reply (Paper 23, "PO Sur-Reply").

An Oral Hearing took place on January 5, 2022. A transcript of the Oral Hearing is entered in the record. Paper 31 ("Tr.").

[1] We granted Petitioner authorization to file a Corrected Petition on December 2, 2020. Paper 10.

Petitioner also filed a Motion to Exclude certain testimony. Paper 26 ("Mot. Exclude"). Patent Owner filed an Opposition (Paper 27, "Opp. Exclude"), and Petitioner filed a Reply (Paper 28, "Reply Exclude").

We have jurisdiction under 35 U.S.C. § 6. The evidentiary standard is a preponderance of the evidence. *See* 35 U.S.C. § 326(e) (2018); 37 C.F.R. § 42.1(d) (2019). This Final Written Decision is issued pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73.

For the reasons expressed below, we conclude that Petitioner has demonstrated by a preponderance of evidence that claims 1–19 are unpatentable as being directed to ineligible subject matter.

A. Related Proceedings

The parties have not identified any related matters. Pet. 3; Paper 4, 2.

B. The '585 Patent

The '585 patent relates to an integrated computer system for acquiring and managing beverage inventories. Ex. 1001, 1:15–18. According to the '585 patent, "[t]raditional systems for managing beverage inventories are largely fragmented with each party to the system maintaining its own distinct interfaces, capabilities, and limitations." *Id.* at 1:22–25. For example, a merchant, distributor, and supplier may each have their own unique inventory system, which can create problems from the merchant perspective. *Id.* at 1:25–36. The '585 patent discloses a system that purports to avoid these problems by using a centralized content management system to provide a streamlined and robust system of managing beverage product inventory and ordering. *Id.* at 2:48–51, 2:56–59.

Figure 1 of the '585 patent, reproduced below, illustrates networked beverage inventory management system 100. *Id.* at 3:1–3.

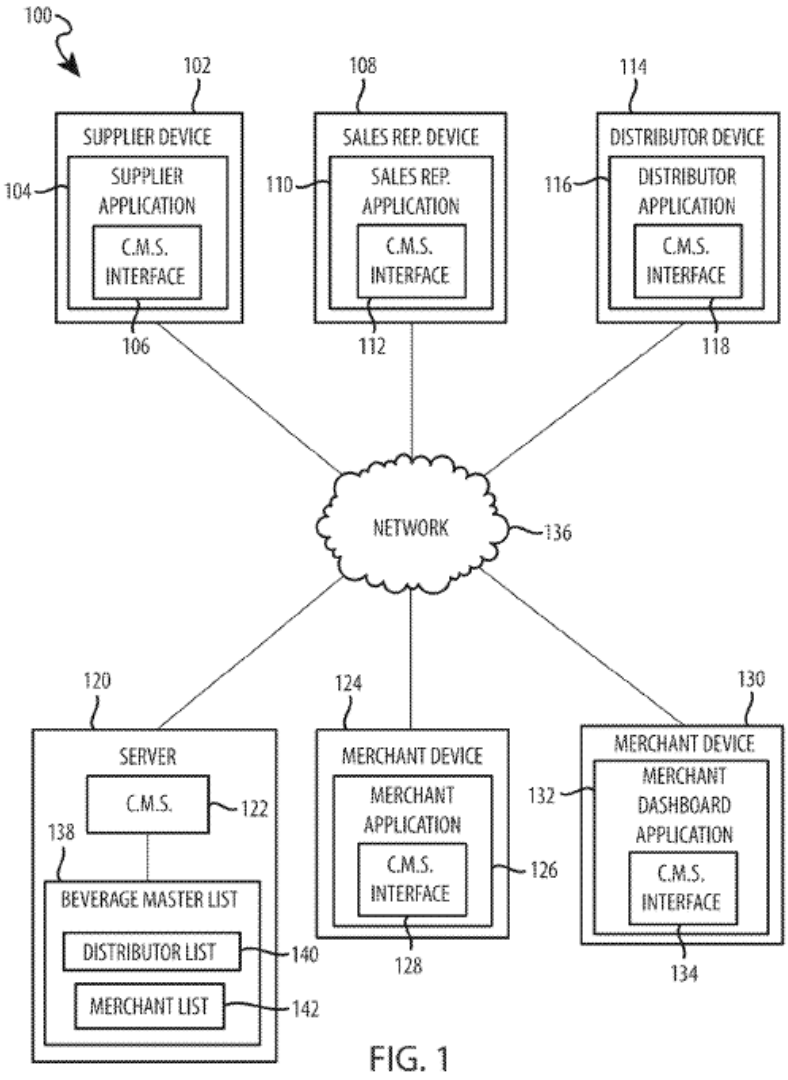

FIG. 1

Figure 1 illustrates networked beverage inventory management system 100. *Id.* at 3:1–3.

Networked beverage inventory management system 100 includes supplier device 102, sales representative device 108, distributor device 114, server 120, and merchant devices 124 and 130, all connected over network 136. *Id.* at 3:5–9. Server 120 includes content management system ("CMS") 122 that maintains "current and past beverage product orders, as well as storing and updating inventory and par value information for various entities in the beverage product supply chain (e.g., merchants, distributors,

and suppliers)." *Id.* at 3:33–38. The '585 patent defines "par value" for a product as "the minimum units of a given product that the merchant wishes to have on hand." *Id.* at 5:44–46. Server 120 also includes master beverage list 138, which is a database containing product information for a plurality of beverage products and may contain distributor product list 140 and merchant product list 142. *Id.* at 3:49–52, 3:57–59. Supplier device 102 includes supplier application 104, which has CMS interface 106 and is capable of sending and receiving beverage ordering information, such as pricing information and promotional offers. *Id.* at 4:7–11, 4:17–22. Sales representative device 108 includes sales representative application 110, which allows a user to manage beverage inventory orders and promotional offers via CMS interface 112. *Id.* at 4:38–45. Distributor device 114 includes distributor application 116, which includes CMS interface 118 and provides functionality such as setting and sending price information, communicating with sales representative device 108, accessing distributor inventory, and analyzing merchant orders for relevant promotional offers. *Id.* at 4:59–5:8. Merchant devices 124 and 130 include merchant applications 126 and 132, respectively. *Id.* at 5:32–33, 5:57–58. The merchant applications can be used to track the merchant's beverage product inventory and build product orders. *Id.* at 5:36–40. Inventory management system 100 may be configured based on geographic location, for example, to operate based on the applicable laws in the states where merchant devices 124 and 130 are located. *Id.* at 6:11–19.

Figure 2 of the '585 patent, reproduced below, is flowchart 200 illustrating a method of building and placing a beverage product order using inventory management system 100. *Id.* at 6:40–43.

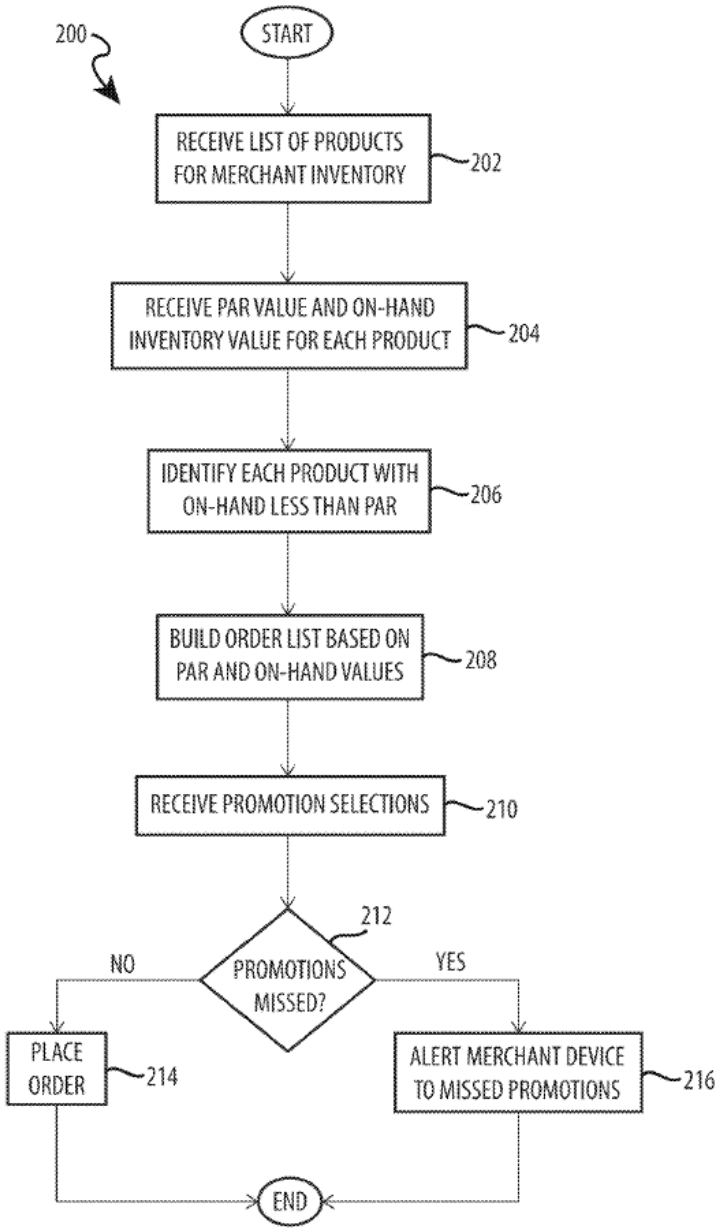

FIG. 2

Figure 2 is a flowchart illustrating a method of building and placing a beverage product order using inventory management system 100. *Id.* at 6:40–43.

At operation 202, a user of merchant device 124 selects beverage products that the merchant needs and transmits that list to CMS 122. *Id.* at 6:51–52, 6:60–67. In operations 204 and 206, CMS 122 receives a par value

and on hand value for each item in the merchant's product list, and identifies each product that has an on hand value that is less than the par value. *Id.* at 7:1–2, 7:20–22. At operation 208, CMS 122 automatically generates an order list that will bring the on hand value equal to the par value for each of the beverage products in the order. *Id.* at 7:30–31, 7:35–39. The user of merchant device 124 may then confirm the number of units for each product, select promotional offers made available by other entities using the inventory system, and transmit the order to CMS 122. *Id.* at 7:41–52. In operation 210, CMS 122 receives the order with promotional offer selections from merchant device 124. *Id.* at 7:53–54.

Figure 6 of the '585 patent, reproduced below, is flowchart 600 illustrating a method of placing an order using inventory management system 100 that includes beverage products for multiple distributors/suppliers. *Id.* at 9:26–36.

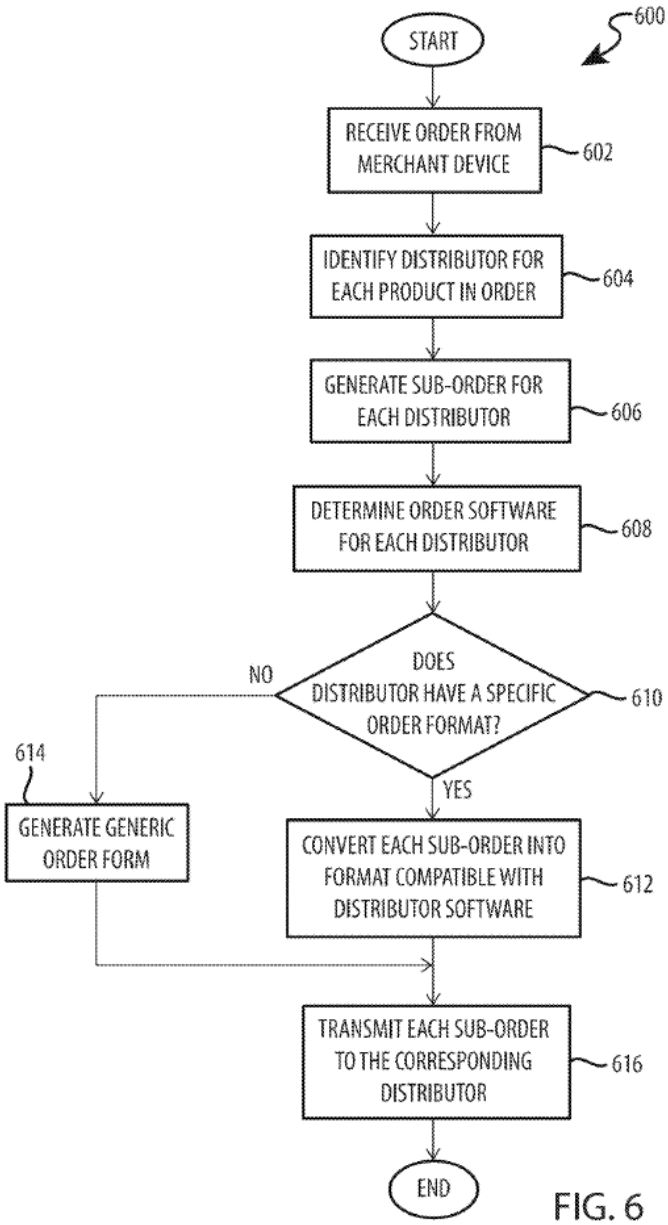

FIG. 6

Figure 6 of the '585 patent is flowchart 600 illustrating a method placing an order using inventory management system 100 that includes beverage products for multiple distributors/suppliers. *Id.* at 9:26–36.

At operation 602, CMS 122 receives an order for a plurality of beverage products from merchant device 124. *Id.* at 9:37–39. Next, in operation 604, CMS 122 identifies a distributor for each product included in the order, based on user input, a pre-existing list of approved distributors, or

location information. *Id.* at 9:46–49. At operations 606 and 608, CMS 122 generates a sub-order for each distributor identified and determines the order software for each distributor. *Id.* at 9:60–61, 10:1–2. Then, in decision block 610, CMS 122 determines whether each distributor has a specific order format that it uses. *Id.* at 10:9–10. If CMS 122 determines that the distributor does have a specified order format, then it converts each sub-order into a format compatible with the software used by the associated distributor in operation 612. *Id.* at 10:20–24. If CMS 122 determines that the distributor does not have a specified order format, then it generates a generic order form in operation 614. *Id.* at 10:24–27. At operation 616, CMS 122 transmits each sub-order to the corresponding distributor and/or the distributor's sales representative for processing and fulfillment. *Id.* at 10:37–40.

C. Challenged Claims

Petitioner challenges claims 1–19. Claims 1, 6, and 14 are independent. Claims 1 and 6 are illustrative of the challenged subject matter and are reproduced below.

> 1. A method of optimizing computerized inventory orders over a distributed network comprising:
>
> receiving, from a first user device connected to the distributed network, a list of one or more products, the list including a par value and an inventory value associated with each of the one or more products, the par value and inventory value corresponding to a single delivery location;
>
> responsive to receiving the list of one or more products, determining, by one or more processors, an inventory order for the single delivery location based, at least in part, on the associated par value and the associated inventory value of each of the one or more products;

receiving, from a second user device connected to the distributed network, a set of available promotions;

responsive to receiving the set of available promotions, transmitting, over the distributed network by the one or more processors, the set of available promotions associated with at least one of the one or more products to the first user device;

receiving, from the first user device, a selection of at least one promotion of the set of available promotions;

automatically adjusting, by the one or more processors, a price of at least one of the one or more products associated with the at least one promotion to the inventory order;

outputting to a display on the first user device, an updated inventory order including the adjusted price of the at least one of the one or more products associated with the at least one promotion;

receiving, by the one or more processors, a user confirmation for the updated inventory order for delivery of the one or more products to the single delivery location;

identifying, by the one or more processors, respective distributors associated with each product of the one or more products within the updated inventory order, wherein each of the products is associated with a single distributor;

generating, by the one or more processors, a plurality of distributor specific inventory orders for each distributor identified as providing a product within the updated inventory order, wherein the plurality of distributor specific inventory orders each include a different format; and

transmitting by the one or more processors, the plurality of distributor specific inventory orders to each of the identified distributors for fulfillment of the updated inventory order for the delivery location.

Ex. 1001, 13:35–14:15.

6. A method of identifying a product distributor based on electronic location information comprising:

> registering, by one or more processors, a merchant with a content management system containing beverage products, distributor, sales representative, and supplier information;
>
> responsive to registering the merchant, determining a location of the merchant based on electronic location information;
>
> providing, over a network, the merchant with access to at least one of the beverage inventory, distributor, sales representative, and supplier information stored on the content management system;
>
> receiving, by the one or more processors, a purchase request for a first beverage product and a second beverage product from the merchant;
>
> responsive to receiving the purchase request, automatically identifying, by the one or more processors, a first distributor for fulfilling a first portion of the purchase request corresponding to the first beverage product based on the electronic location information, and a second distributor for fulfilling a second portion of the purchase request corresponding to the second beverage product, wherein each beverage product is associated with a single distributor; and
>
> transmitting, via the network, the purchase request to the first identified distributor and the second identified distributor for fulfilment of the purchase request and delivery of the first beverage product and the second beverage product to the location of the merchant.

Id. at 14:42–15:3.

D. Alleged Ground of Unpatentability

This proceeding involves the following ground:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–19	101	Subject Matter Eligibility

Pet. 44. Petitioner relies on the Declarations of Paul Min, Ph.D. (Ex. 1008), and Brian Albenze (Ex. 1030) to support its assertion of unpatentability.

Patent Owner relies on the Declarations of Joe Cool (Ex. 2001) and Jason K. Smith (Ex. 2002).

II. ANALYSIS

A. Petition Service Date

Patent Owner argues that Petitioner did not properly effect service of the Petition on or before September 15, 2020, as required by the CBM patent review program. PO Resp. 1–2, 14–21; PO Sur-Reply 16–18. According to Patent Owner, the Petition should not be accorded a filing date of September 15, 2020 because Patent Owner did not receive the Petition via Federal Express ("FedEx") until September 16, 2020. *Id.* at 15–16. Patent Owner maintains that September 15, 2020 was the last date to file a CBM petition before the sunset of the CBM patent review program. *Id.* at 14–16. Although Petitioner also emailed a courtesy copy of the Petition and exhibits to Patent Owner's counsel, Gina Cornelio and Case Collard, Patent Owner argues that the email service on September 15, 2020 does not comply with 37 C.F.R. §§ 42.6(e)(1) and 42.300(a) because the parties did not previously agree to electronic service. *Id.* at 14–15.

Additionally, Patent Owner contends that for service to be effective on September 15, 2020, the Petition must have been served on the correspondence address of record for Patent Owner on September 15, 2020 per 37 C.F.R. § 42.205(a). *Id.* at 15. Patent Owner asserts that the Petition did not arrive by FedEx until September 16, 2020, which Patent Owner contends is too late. *Id.* at 14–16. Patent Owner further contends that the "mailbox rule" does not apply to this proceeding and that we should not find that the Petition was served upon its deposit at the FedEx location. *Id.* at 16–17.

Patent Owner also argues that 37 C.F.R. § 42.6 does not provide for service upon deposit by means other than Priority Mail Express. PO Resp. 17. Because of this, Patent Owner argues that Petitioner's use of FedEx service is not effective until receipt. *Id.*

Patent Owner further relies on *Cultec, Inc. v. Stormtech LLC*, IPR2017-00526, Paper 14 at 14 (PTAB July 17, 2017), and *Teva Pharmaceuticals USA, Inc., v. Monosol RX, LLC*, IPR2016-00281, Paper 21 at 13 (PTAB May 23, 2016), to support its position. PO Resp. 17–20.

Additionally, Patent Owner takes issue with our Decision on Institution and contends that the panel does not have discretion to waive our regulations regarding the service requirements because these are jurisdictional. PO Resp. 20–21.

We disagree with Patent Owner's argument that, because they are effectively statutory, our regulatory service requirements cannot be waived. Patent Owner's arguments are unpersuasive because they attempt to conflate and collapse statutory and regulatory requirements into one another.

We first turn to the statutory requirements for a petition in a covered business method patent review. Per 35 U.S.C § 322(a),

> A petition filed under section 321 may be considered only if—
>
> (1) the petition is accompanied by payment of the fee established by the Director under section 321;
>
> (2) the petition identifies all real parties in interest;
>
> (3) the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim, including—
>
> (A) copies of patents and printed publications that the petitioner relies upon in support of the petition; and

> (B) affidavits or declarations of supporting evidence and opinions, if the petitioner relies on other factual evidence or on expert opinions;
>
> (4) the petition provides such other information as the Director may require by regulation; and
>
> (5) the petitioner provides copies of any of the documents required under paragraphs (2), (3), and (4) to the patent owner or, if applicable, the designated representative of the patent owner.

35 U.S.C. § 322(a). Though § 322 requires the petitioner to provide "copies of any of the documents required under paragraphs (2), (3), and (4) to the patent owner or . . . the designated representative of the patent owner," the statute does not expressly address or impose specific service or service requirements (and there is no dispute here that Patent Owner was "provide[d]" with copies of the relevant documents).

Second, we turn to the "Sunset" provisions of Section 18(a)(3) of the AIA, which provides that "[t]his subsection, and the regulations issued under this subsection, are repealed effective upon the expiration of the 8-year period beginning on the date that the regulations issued under . . . paragraph (1) take effect," and "this subsection and the regulations issued under this subsection shall continue to apply, after the date of the repeal under subparagraph (A), to any petition for a transitional proceeding that is *filed* before the date of such repeal." Emphasis added. Section 18(a)(3) also does not expressly address or impose specific requirements for the service of the petition (and there is no dispute that the Petition was "filed" before the repeal of the CBM program).

The service requirements are, instead, provided in our governing rules. More specifically, 37 C.F.R. § 42.206(a) provides that "[a] petition to institute a post-grant review will not be accorded a filing date until the

petition . . . (1) [c]omplies with § 42.204 or § 42.304, as the case may be, (2) [e]ffects service of the petition on the correspondence address of record as provided in § 42.205(a); and (3) [i]s accompanied by the filing fee in § 42.15(b)." And, with respect to service, 37 C.F.R. § 42.205 provides that

> [i]n addition to the requirements of § 42.6, the petitioner must serve the petition and exhibits relied upon in the petition as follows:
>
> > (a) The petition and supporting evidence must be served on the patent owner at the correspondence address of record for the subject patent. The petitioner may additionally serve the petition and supporting evidence on the patent owner at any other address known to the petitioner as likely to effect service.
> >
> > (b) Upon agreement of the parties, service may be made electronically. Service may be by Priority Mail Express® or by means at least as fast and reliable as Priority Mail Express®. Personal service is not required.

37 C.F.R. § 42.205. Thus, the specific service requirements at issue here are regulatory, not statutory.

In addition, as discussed in the Institution Decision, we determined that Petitioner's FedEx service was sufficient to satisfy our service requirements. *See* Dec. 13. We noted that 37 C.F.R. § 42.205(b) indicates that "[s]ervice may be by Priority Mail Express® or *by means at least as fast and reliable as Priority Mail Express®*. Personal service is not required." Dec. 13 (citing 37 C.F.R. § 42.205(b)). Further, we observed that Petitioner provided evidence that Priority Mail Express guarantees 1-Day or 2-Day expedited services by 3 p.m. and FedEx provides *next* day delivery options that may be faster than Priority Mail Express. *See id.*; Ex. 1038; Ex. 1041. Considering the parties' filings and based on the particular facts of this case, we are still satisfied that Petitioner's use of FedEx on September 15, 2020,

followed by delivery the next day— September 16, 2020 —is sufficiently akin to Priority Mail Express to satisfy the service requirement of § 42.205(b). *See CoolIT Sys., Inc., v. Asetek Danmark A/S,* IPR2020-00522, Paper 9 at 10–12 (PTAB Aug. 24, 2020) (determining that next business day FedEx service is sufficiently akin to Priority Mail Express); *Varian Med. Sys., Inc. v. Best Med. Int'l, Inc.*, IPR2020-00071, Paper 14 at 33–34 (PTAB May 1, 2020) (finding Petitioner's use of FedEx on a Friday evening followed by delivery on the following Monday to be sufficiently akin to Priority Mail Express).

We are not persuaded otherwise by Patent Owner's reliance on the decisions denying institution in *Cultec, Inc. v. Stormtech LLC*, IPR2017-00526, Paper 14 (PTAB July 17, 2017), or *Teva Pharmaceuticals USA, Inc., v. Monosol RX, LLC*, IPR2016-00281, Paper 21 (PTAB May 23, 2016). PO Resp. 17–20.

In *Cultec*, the petitioner filed and served a petition for *inter partes* review on January 5, 2017, but failed to pay the filing fee until January 6, 2017, after the statutory bar date. *Cultec*, Paper 14 at 2. The petitioner filed a motion to accord a petition filing date of January 5, 2017. *Id.* The Board denied the petitioner's motion, determining that the petitioner's failed attempts to pay by credit card and debit card were due to

> (1) a lack of understanding as to how proper payments are made; (2) a lack of understanding of one's own accounts, particularly the funds available for payment; (3) an unreasonable lack of diligence in checking the status of the initial payment; and (4) a lack of any evidence indicating that the PTO's payment system had any technical difficulties on January 5th.

Cultec, Paper 14 at 6.

Rather than supporting Patent Owner's position, *Cultec* is consistent with the notion that the Board may waive filing requirements in according a filing date. *See id.* at 10 ("We agree that the Board has discretion to waive non-statutory requirements of our rules. 37 C.F.R. § 42.5(b)."). Whether to do so is fact specific to the particular circumstances of each case. In *Cultec*, the Board determined that the petitioner had failed to sufficiently fund its accounts to pay the filing fee and there was a lack of evidence showing that the PTO's payment system had any technical difficulties, which was the basis of the petitioner's motion. *Id.* at 6–7. In short, the evidence in that proceeding did not support the petitioner's arguments for waiver.

Teva involved a similar situation. There, the petitioner requested changing the filing date accorded from December 4, 2015, to December 3, 2015, because the petitions and exhibits were uploaded on December 3, 2015, and payment was attempted, but not completed on that date due to "technical issues." *Teva*, Paper 21 at 3. However, the panel found that the petitioner failed to establish "persuasively that a 'compromised PRPS system' caused Petitioner's delay in uploading the petition documents, or prevented Petitioner from paying the petition fees, and serving Patent Owner with the petitions on December 3, 2015." *Id.* at 9. Moreover, the panel found that the petitioner did not attempt to serve the petition on December 3, 2015. *Id.* at 12. And, the panel reiterated that the "Board's exercise of discretion [is] based on the particular facts presented." *Id.*

Based on the particular facts presented in the instant proceeding, we note again that it is undisputed that Patent Owner not only received the Petition by FedEx on September 16, 2020, but that Patent Owner's counsel received the same documents via email on September 15, 2020. *See* PO Resp. 15–16. Thus, unlike *Teva*, an attempt to serve Patent Owner was

made on September 15, 2020. Moreover, that attempt was akin to Priority Mail Express, which we determine is sufficient to satisfy the service requirements under 37 C.F.R. § 42.205(b).

Additionally, we note for the record that 37 C.F.R. § 42.5(b) provides that "[t]he Board may *waive or suspend* a requirement of parts 1, 41, and 42 and may place conditions on the waiver or suspension." 37 C.F.R. § 42.5(b) (emphasis added). We understand Rule 42.5(b) to expressly allow the exercise of Board discretion in applying our regulations as set forth in parts 1, 41, and 42. *See id.* To the extent that Patent Owner contests the scope of our discretion under Rule 42.5, we are not persuaded by Patent Owner's position that the AIA limits our discretion to waive regulatory service requirements set forth in 37 C.F.R. § 42.205. As discussed, the specific service requirements at issue are regulatory in nature.

Accordingly, we maintain that the Petition's filing date is September 15, 2020.

B. Claim Construction

In a covered business method patent review, we interpret claims in the same manner used in a civil action under 35 U.S.C. § 282(b) "including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent." 37 C.F.R. § 42.300(b) (2019). In applying a district court-type claim construction, we are guided by the principle that the words of a claim "are generally given their ordinary and customary meaning," as understood by a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). "In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of

record, examining the claim language itself, the written description, and the prosecution history, if in evidence." *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). There is a "heavy presumption," however, that a claim term carries its ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (citation omitted).

Only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017).

Petitioner does not propose any explicit constructions for any claim terms. *See* Pet. 44. Patent Owner also does not propose any explicit constructions for any claim terms. *See* PO. Resp. We determine that no explicit construction is necessary in order to resolve the issues before us.

C. Level of Skill in the Art

Based on the full trial record, including our review of the '585 patent and the types of problems and solutions described in the '585 patent and cited reference materials, we agree with Dr. Min that a person of ordinary skill in the art would have had "the equivalent of a Bachelor's degree or higher in electrical engineering, computer science or computer networking, and at least 2 years working experience designing communication systems." *See* Ex. 1008 ¶ 21. Patent Owner does not dispute Petitioner's proffered level of ordinary skill in the art.[2] *See generally* PO Resp.

[2] In opposing Petitioner's Motion to Exclude, Patent Owner states that "the Board should modify its definition of person of ordinary skill in the art," Opp. Exclude 5 n.1, but never proposes a different definition and does not dispute Petitioner's definition in its Response or Sur-Reply.

D. Covered Business Method Patent Review Eligibility

Under § 18(a)(1)(E) of the AIA, we may institute a transitional review proceeding only for a CBM patent. A "covered business method patent" is a patent that "claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions." AIA § 18(d)(1) (2012); *see also* 37 C.F.R. § 42.301 (defining "[c]overed business method patent" and "[t]echnological invention"). To determine whether a patent is eligible for a CBM patent review, the focus is on the claims. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1340 (Fed. Cir. 2016) ("[Section] 18(d)(1) directs us to examine *the claims* when deciding whether a patent is a [covered business method] patent."); *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 1376, 1382 (Fed. Cir. 2016) (CBM patents "are limited to those with *claims* that are directed to methods and apparatuses of particular types and with particular uses 'in the practice, administration, or management of a financial product or service'" (emphasis added)). One claim directed to a CBM is sufficient to render the patent eligible for CBM patent review. *See* Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention; Final Rule, 77 Fed. Reg. 48,734, 48,736 (Comment 8) (Aug. 14, 2012).

1. Standing

Section 18(a)(1)(B) of the AIA requires that Petitioner, its real party-in-interest or privy, "has been sued for infringement of the patent or has been charged with infringement under that patent."

Petitioner contends that this standing requirement is satisfied based on a series of correspondence through which Patent Owner accused Petitioner's

product ordering system of infringing at least one claim of the '585 patent. Pet. 27–31.

Patent Owner does not dispute Petitioner's position. *See generally* PO Resp.

After considering the parties' arguments, and for the reasons explained below, we maintain that Petitioner has met its burden of demonstrating that it is eligible to bring this CBM patent review. *See* 37 C.F.R. § 42.304(a).

a) Whether Petitioner Has Been "Sued for Infringement"

To start, we note that Patent Owner has not sued Petitioner for infringement. *See* Pet. 3, 27–31.

b) Charged with Infringement

Next, we determine whether Petitioner has been "charged with infringement." Our rules provide that "[c]harged with infringement means "a real and substantial controversy regarding infringement of a covered business method patent exists such that the petitioner would have standing to bring a declaratory judgment action in Federal court." 37 C.F.R. § 42.302(a). The Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a).

In *MedImmune, Inc. v. Genentech, Inc.*, the Supreme Court stated that the test for whether an "actual controversy" exists is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient

immediacy and reality to warrant the issuance of a declaratory judgment." 549 U.S. 118, 127 (2007). Further, our reviewing court has instructed that *MedImmune* relaxed the test for establishing jurisdiction, but "did not change the bedrock rule that a case or controversy must be based on a *real* and *immediate* injury or threat of future injury that is *caused by the defendants*—an objective standard that cannot be met by a purely subjective or speculative fear of future harm." *Prasco, LLC v. Medicis Pharm. Corp.*, 537 F.3d 1329, 1339 (Fed. Cir. 2008). The Federal Circuit has further explained that

> "jurisdiction generally will not arise merely on the basis that a party learns of the existence of a patent owned by another or even perceives such a patent to pose a risk of infringement, without some affirmative act by the patentee." *SanDisk* [*Corp. v. STMicroelecs., Inc.,*], 480 F.3d [1372,] 1381 [(Fed. Cir. 2007)]. Instead, we have required "conduct that can be reasonably inferred as demonstrating intent to enforce a patent." *Hewlett–Packard Co. v. Acceleron LLC*, 587 F.3d 1358, 1363 (Fed. Cir. 2009).

Asia Vital Components Co. v. Asetek Danmark A/S, 837 F.3d 1249, 1253 (Fed. Cir. 2016).

Turning to the facts of this case, Petitioner contends that Patent Owner's litigation counsel sent a January 30, 2020 Letter in which Patent Owner alleged similarities between the '585 patent and Petitioner's product ordering system. Pet. 27 (citing Ex. 1003). In that letter, Patent Owner's counsel invited Petitioner to discuss a "license agreement" as a "practical business solution" to the parties' dispute. Ex. 1003, 2. Subsequently, Petitioner responded in a February 28, 2020 Letter (Ex. 1004) asserting that Petitioner's beverage ordering platform does not infringe the '585 patent and that any similar features existed in prior art systems. Pet. 28; Ex. 1004, 1–3.

Subsequently, in a June 18, 2020 Letter, Patent Owner accused Petitioner's beverage ordering platform of infringing the '585 patent. Ex. 1005, 1–4. The June 18, 2020 Letter included a claim chart "mapping [Petitioner's] product to independent claim 14." *Id.* at 1–4 ("For at least the reasons outlined in this letter, [Petitioner] infringes the '585 patent and the '585 patent is valid."). The parties then engaged in discussions, which did not ultimately resolve the dispute. Pet. 28. On September 3, 2020, Patent Owner reiterated its position that Petitioner's product infringed the '585 patent:

> [Petitioner] may not continue to infringe on Dust Bowl's patent. [Petitioner] has no good faith basis to avoid willful infringement going forward, either under its undisclosed (and likely non-existent) non-infringement defense or under its rebutted invalidity arguments. [Petitioner] is now on notice that any infringement going forward will be willful, especially under the subjective *Halo* standard. Dust Bowl reserves all rights and remedies, including injunctive relief if necessary.

Ex. 1007, 2.

Taking into account the full relationship between the parties and the particular circumstances in this case, we determine that Patent Owner's actions and statements alleging infringement are sufficient to establish that there is a substantial controversy between the parties sufficient to establish CBM patent review standing under relevant case law. *See SanDisk Corp. v. STMicroelecs., Inc.*, 480 F.3d 1372, 1382 (Fed. Cir. 2007) (holding demand for license fees and identification of specific allegedly infringing activity sufficient for jurisdiction).

2. Financial Product or Service

The AIA defines a CBM patent as "a patent that claims a method or corresponding apparatus for performing data processing or other operations

used in the practice, administration, or management of a financial product or service." AIA § 18(d)(1); *see* 37 C.F.R. § 42.301(a). The definition can encompass patents claiming activities that are financial-in-nature. Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. 48,734, 48,735 (Aug. 14, 2012); *Blue Calypso*, 815 F.3d at 1338–41 (determining that a patent was a covered business method patent because it claimed activities that are financial-in-nature); *Unwired Planet*, 841 F.3d at 1380 n.5 (stating, "we endorsed the 'financial in nature' portion of the standard as consistent with the statutory definition of 'covered business method patent' in *Blue Calypso*"); *Versata Dev. Grp, Inc. v. SAP Am., Inc.,* 793 F.3d 1306, 1324–25 (Fed. Cir. 2015) ("[The statute] on its face covers a wide range of finance-related activities."). A patent need have only one claim directed to a covered business method to be eligible for review. Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. 48,734, 48,736 (Aug. 14, 2012).

Pointing to specific limitations of the claims, Petitioner asserts that the challenged claims are directed to the financial activity of purchasing beverage products using a computerized system. Pet. 32. For example, Petitioner notes that claim 6 recites "transmitting, via the network, the purchase request to the first identified distributor and the second identified distributor for fulfilment of the purchase request and delivery of the first beverage product and the second beverage product to the location of the merchant." *Id.* at 32–33 (quoting Ex. 1001, 14:66–15:3 (claim 6)). Petitioner contends that "[t]he placement of orders for beverage products is a financial activity." *Id.* at 33.

Patent Owner argues that "[t]he ordering, purchase, and/or sale of alcohol is not a 'financial product or service' under any commonplace definition" because financial companies do not "manage inventory or offer the order, purchase, and/or sale of alcohol." PO Resp. 22. Patent Owner further cites *Unwired Planet* and argues "the Federal Circuit noted that 'it cannot be the case that a patent covering a method and corresponding apparatuses becomes a CBM patent because its practice could involve a potential sale of a good or service.'" *Id.* at 22–23 (citing *Unwired Planet*, 841 F.3d at 1382). According to Patent Owner, "it is evident that the placement of orders (itself only a part of managing inventory) is not itself a 'financial activity' but instead is merely incidental to or complementary to a financial activity." *Id.* at 23. Patent Owner adds that the optimization of orders, automated generation of orders, or identification of a product distributor are not financial activities. *Id.*

We agree with Petitioner that at least claims 1 and 6 of the '585 patent recite methods for performing data processing or other operations used in the practice, administration, or management of a financial product or service. Claim 6 recites "registering . . . a *merchant* with a content management system containing beverage products, distributor, *sales* representative, and supplier information." Ex. 1001, 14:43–46 (emphasis added). Claim 6 further recites the steps of receiving beverage "purchase request[s]" and transmitting these purchase requests for "fulfilment of the purchase request and delivery of the first beverage product and the second beverage product to the location of the merchant." *Id.* at 14:57–15:3. Claim 6 is not limited to the mere identification of a product distributor as Patent Owner contends. PO Resp. 24. Rather, claim 6 goes beyond a "potential sale of a good or service" exempted in *Unwired Planet*, and requires the transmission of

purchase requests for the actual *fulfilment* (i.e., sale) of the products. *See* Ex. 1001, 14:39–15:3; *see Unwired Planet*, 841 F.3d at 1382. Likewise, claim 1's method of optimizing computerized inventory, includes the steps of "transmitting . . . the plurality of distributor specific inventor orders to each of the identified distributors for *fulfillment* of the updated inventory order for the delivery location." *Id.* at 14:12–15.

The Specification of the '585 patent lends further support to our reading of these claims. With reference to Figure 2, the '585 patent teaches a flowchart for "building and placing an order of beverage products." Ex. 1001, 6:40–43, Fig. 2. Figure 2 shows various steps that include the building of an order list and the *placing* of the order at step 214. *Id.* at Fig. 2. Additionally, the '585 patent describes Figure 41 as an example screenshot of an embodiment of Figure 1. *Id.* at 11:58–60. Figure 41 is provided below:

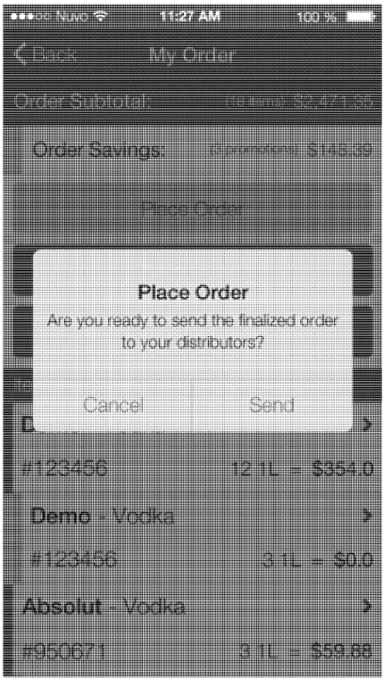

FIG. 41

Figure 41 is an example screenshot showing an embodiment of the networked beverage inventory management and acquisition system of Figure 1. *Id.* at 2:42–44. As shown in Figure 41, the '585 patent teaches the fulfillment of a beverage purchase order that is consistent with the recited transmitting steps recited in claims 1 and 6.

Accordingly, we conclude that at least claims 1 and 6 recite methods for performing data processing or other operations used in the practice, administration, or management of a financial product or service within the meaning of AIA § 18(d)(1).

We do, however, note that even assuming claims 1 and 6 do not expressly require a purchase or sale (*see* PO Resp. 24), our Decision on Institution observed that claim 12 (which depends from claim 6) expressly recites financial activity, namely "receiving . . . a credit application from the merchant" and "transmitting . . . the credit application to the first distributor for approval." Dec. 23–24 n. 3; Ex. 1001, 15:35–40; *see* Pet. Reply 12. Patent Owner contends that "[a] request (or application) does not require consummation of a sale or extension of credit or any other financial activity," PO Sur-Reply 18, but we do not see any basis to require that a claim recite the *completion* of a financial transaction to qualify as "for performing data processing or other operations used in the practice, administration, or management of a financial product or service" under AIA § 18(d)(1). And again, a patent need have only one claim directed to a covered business method to be eligible for review.

3. Technological Invention

Even if a patent includes claims that would otherwise be eligible for treatment as a CBM patent, a review of the patent is precluded if the claims cover only "technological invention[s]," as defined by 37 C.F.R.

§ 42.301(b). The definition of "covered business method patent" in § 18(d)(1) of the AIA does not include patents for "technological inventions." To determine whether a patent is for a technological invention, we consider the following: "whether the claimed subject matter as a whole [(1)] recites a technological feature that is novel and unobvious over the prior art; and [(2)] solves a technical problem using a technical solution." 37 C.F.R. § 42.301(b). Both prongs must be satisfied in order to exclude the patent as a technological invention. *See Versata*, 793 F.3d at 1326–27; *Apple Inc. v. Ameranth, Inc*., 842 F.3d 1229, 1240 (Fed. Cir. 2016).

The following claim-drafting techniques typically do not render a patent a "technological invention":

> (a) Mere recitation of known technologies, such as computer hardware, communication or computer networks, software, memory, computer-readable storage medium, scanners, display devices or databases, or specialized machines, such as an ATM or point of sale device.
>
> (b) Reciting the use of known prior art technology to accomplish a process or method, even if that process or method is novel and non-obvious.
>
> (c) Combining prior art structures to achieve the normal, expected, or predictable result of that combination.

Patent Trial and Appeal Board Consolidated Trial Practice Guide[3] 43 (Nov. 2019) ("Consolidated Trial Practice Guide"). The Federal Circuit has held that a claim does not include a "technological feature" if its "elements are nothing more than general computer system components used to carry out the claimed process." *Blue Calypso*, 815 F.3d at 1341; *see also Versata*, 793 F.3d at 1327 ("the presence of a general purpose computer to facilitate

[3] Available at https://www.uspto.gov/TrialPracticeGuideConsolidated; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019).

operations through uninventive steps does not change the fundamental character of an invention").

Petitioner argues that the '585 patent is not for a technological invention because it fails both prongs—the claimed subject matter as a whole does not recite a technological feature that is novel and unobvious over the prior art and its does not recite a technological solution to a technological problem. Pet. 36–44.

Patent Owner disputes that the '585 patent meets the financial product or service requirement for CBM patent eligibility, as discussed above, but does not provide arguments that the '585 patent is for a technological invention. *See generally* PO Resp.

With respect to the first prong of the technological invention exception, Petitioner argues that at least claims 1, 6, and 14 recite only well-known and general computer system components and software functions. Pet. 37–42.

Based on the full trial record, Petitioner's evidence sufficiently shows that none of the possible technological features recited by at least claims 1 and 6 are novel and unobvious over the prior art. *See* Pet. 37–42. Claim 1 recites a "first user device" with a "display," "second user device," and "one or more processors" on a "distributed network." Ex. 1001, 13:35–14:15. Petitioner's declarant, Dr. Min, testifies that "the first and second user devices are described so broadly in the specification that they encompass any programmable electronic device capable of communicating with other devices." Ex. 1008 ¶ 41 (emphasis omitted). Dr. Min's testimony is consistent with the Specification of the '585 patent, which discloses that user devices such as

> supplier device 102, sales representative device 108, distributor device 114, server 120, and merchant devices 124 and 130 may be *desktop computers, laptop computers, tablet computers, smartphones, personal digital assistants, or any other programmable electronic device capable of communicating with the other devices* in inventory management and acquisition system 100 via network 136.

Ex. 1001, 3:18–25 (emphasis added). With respect to "one or more processors," Dr. Min testifies that the '585 patent teaches "microprocessors, communications and network processors, etc.," which are generic computer components. Ex. 1008 ¶ 42 (citing Ex. 1001, 10:65–68; Ex. 1013, 433, 102, 142 (Microsoft Computer Dictionary)). Further, Dr. Min explains that the recited display can be any "mechanism to display data." *Id.*; *see also* Ex. 1001, 11:55–57 ("Display 820 provides a mechanism to display data to a user and may be, for example, an embedded display screen or touch screen."). Additionally, we note that the '585 patent also teaches that the "network" may include conventional components such as wiring, wireless communication links, fiber optic cables, and any other communication medium. Ex. 1001, 3:9–17. Further, "[n]etwork 136 may be a wide area network (WAN), such as the Internet, a local area network (LAN), or any other suitable network. In general, network 136 can be any combination of connections and protocols that will support communications between various other devices and computing systems included in inventory management and acquisition system 100." *Id.* at 3:11–17.

Similarly, claim 6 recites "one or more processors," a "content management system," and a "network." *Id.* at 14:43–50. As discussed, we are persuaded by Petitioner's arguments that "processors" and a "network" are generic computer components. *See id.* at 3:9–17, 10:65–68. Additionally, Dr. Min testifies that

> [a] content management system was a commonplace, generic, off-the shelf software application in 2015—decades after its introduction in the late-1990s. Although the patent is silent, one of ordinary skill in the art would have understood in 2015 that a content management system is an "overall process for collecting, managing, and publishing content to any outlet." *See*, B. Boiko, *Understanding Content Management, Bulletin of the American Society for Information Science and Technology*—October/November 2001.

Ex. 1008 ¶ 60 (citing Ex. 1024 (Boiko article)).

We are mindful that both claims 1 and 6 recite methods for "optimizing computerized inventory orders over a distributed network" and "identifying a product distributor based on electronic location information," respectively. Ex. 1001, 13:35–36, 14:41–42. Nonetheless, merely listing computer components, or performing actions by computers, does not make an invention technological. *Blue Calypso*, 815 F.3d at 1341; *see also Versata*, 793 F.3d at 1327. A patent "typically" is not for a "technological invention" if it recites "the use of known prior art technology to accomplish a process or method, *even if that process or method is novel and non-obvious*." Consolidated Trial Practice Guide 43 (emphasis added).

We determine that at least claims 1 and 6 of the '585 patent do not recite a technological feature that is novel and unobvious. Because both prongs must be satisfied for a patent to be excluded from CBM patent review for being a technological invention, we determine that the '585 patent is not for a technological invention based on the first prong alone.

4. Conclusion for CBM Eligibility

We maintain that Petitioner has been charged with infringement under the '585 patent. We further maintain that Petitioner has demonstrated that at least one claim of the '585 patent recites a method for performing data

processing or other operations used in the practice, administration, or management of a financial product or service and is not for a technological invention. Accordingly, we conclude that the '585 patent is eligible for CBM patent review.

E. Subject Matter Eligibility

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*. *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, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes,

such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); "tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores" (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that "a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 187; *see also id.* at 191 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). Having said that, the Court also indicated that a claim "seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment." *Id.* (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.* at 212.

1. 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 (Jan. 7, 2019) ("2019 Revised Guidance" or "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]

[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, *available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf* (the "October 2019 Update").

[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 - Section III(A)(2), 84 Fed. Reg. 54–55.

2019 Revised Guidance, 84 Fed. Reg. at 52–55. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then at Step 2B 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.

Id. at 56.

2. Step 1: Statutory Category

The first step of the eligibility determination asks if the claim is directed to a process, machine, manufacture, or composition of matter. The parties present no substantive dispute for consideration in this step. Independent claim 1 is directed to a method of optimizing computerized inventory orders over a distributed network. Independent claim 6 is directed to a method of identifying a product distributor based on electronic location information. Independent claim 14 is directed to non-transitory computer-readable medium having stored therein computer program instructions for automatically generating beverage product sub-orders based on associated metadata. Each of these claims and their dependent claims generally relates to a process or machine, which are statutory categories of eligible subject matter. Therefore, we proceed to the next steps of the analysis.

3. Step 2A, Prong 1: Whether the Claims Recite a Judicial Exception

a) Petitioner's Contentions

Petitioner contends that all of the challenged claims are directed to the concept of "facilitating the purchase of items by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers." *See* Pet. 1, 52, 56. Petitioner argues that this concept is both: (1) a fundamental economic practice, and (2) mental steps that can be, and long have been, performed without computers. *Id.* at 56–58 ("[T]he claims of the '585 Patent likewise reflect the fundamental economic practice of facilitating the purchase of items between two parties, including by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers.") (citing Ex. 1008 ¶¶ 38, 46, 69, 72, 92, 96; Ex. 1030 ¶¶ 10–15, 30–32).

In its Reply, Petitioner adds that the '585 patent claims are directed to generic components and functional language, and do not disclose a technological improvement in computer capabilities. Pet. Reply 2–5. Petitioner further asserts that claim 1 is directed essentially to collecting, analyzing, and transmitting information. *See id.* at 3, 5. Petitioner also contends that Patent Owner does not "rely on any authority supporting its belief that expression of the abstract idea itself is dispositive based on the number of used words." *Id.* at 9.

b) Patent Owner's Contentions

Patent Owner contends that the challenged claims are not directed to a fundamental economic practice, but a technological improvement in the beverage industry. PO Resp. 28; PO Sur-Reply 5–9. Patent Owner further contends that the use of a centralized system or central hub to facilitate the

purchase of beverages "is not the same as using an intermediary like a clearinghouse (found to be a fundamental economic practice in *Alice*)." PO Resp. 29. Patent Owner asserts that

> [a] clearinghouse provides security for a transaction by validating a single transaction—ensuring that the buyer buys and the seller sells. "Clearinghouse," *Investopedia*, available at https://www.investopedia.com/terms/c/clearinghouse.asp. This type of intermediated settlement by a clearinghouse is not the same as using a centralized system or central hub to facilitate one specific type of product ordering: ordering of beverages from distributors, which has nothing to do with security or reducing risk of a transaction, but instead concerns match-making between retailers and distributors of beverages.

Id.

Patent Owner also argues that the use of a central hub has no long-standing history because under ordinary circumstances it would be redundant and inefficient. *Id.* Patent Owner contends that a merchant in an ancient market would "make the rounds of the market place, identify the beverages he wished to purchase, negotiate the best prices, and then go along his way, all without any form of extrinsic assistance from a central system." *Id.* at 29–30. Patent Owner further asserts that "[i]t was only in 1933 that the conditions which would benefit from a central hub arose due to the complexity introduced by the three-tiered system resulting from the ratification of the Twenty First Amendment." *Id.* at 30. Patent Owner also contends that the inventions of the '585 patent provided this extrinsic aid in the form of a centralized system or central hub. *Id.* at 30–31.

Separately, Patent Owner contends that Petitioner's articulation of the concept is not simple enough to be abstract. PO Resp. 32 (citing *Kenexa Brassring, Inc. v. HireAbility.com, LLC*, 2015 U.S. Dist. LEXIS 56156, at *13 (D. Mass. 2015)). Patent Owner contends that "'[f]acilitating the

purchase of items by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers' is not an abstract idea at all" because it "requires multiple steps that may or may not be implicated (collecting, analyzing, and transmitting) for information from multiple sources that may or may not be used (inventory, promotions, distributors, i.e., 'particular sellers')." *Id.* at 33–34. Patent Owner further argues that "if an idea cannot be succinctly stated, but rather includes numerous specific references, which are stated in the alternative and require multiple discrete steps, such an idea is not 'abstract' to begin with." *Id.* at 33.

Additionally, Patent Owner asserts that the challenged claims cannot be done in mental steps or with a pen and paper. PO Resp. 35; PO Sur-Reply 9–11. According to Patent Owner, "[a]ttempts to do this work with pen and paper *created* the continuing problems (difficult to identify distributors, missed promotions, failure to identify the need to restock) that the '585 Patent solves." PO Resp. 35. Patent Owner adds that "[a] retailer cannot identify distributors for products out of their mental processes. Nor could a retailer discover the identities of distributors no matter how much pen and paper was supplied." *Id.* at 35–36. Patent Owner asserts that "prior to the invention of the '585 Patent identifying distributors was an imperfect process—sometimes a bar or restaurant could not carry a particular brand or product at all because it had no relationship with a distributor or means to identify that distributor to develop such a relationship." *Id.* at 36 (citing Ex. 2002 ¶ 8 (Smith declaration)). Patent Owner adds that "the complexity of the ordering process—which requires selection of varying quantities of products from thousands of discrete [stock-

keeping units (SKUs)]—precludes the use of mental processes alone or pencil and paper." *Id.*

Patent Owner also contends that *Beverage Media*, a paper periodical filed as Exhibit 1031 and relied upon by Petitioner, Dr. Min, and Mr. Albenze, is not a catalogue that merchants would have used to place orders with distributors because it omits beer beverages, merely *suggests* prices for beverage distributors, and does not allow retailers to determine local distributors. *Id.* at 36–37. In addition, Patent Owner argues that the claimed methods could not be performed in the human mind or with pencil and paper because use of *Beverage Media*'*s* sizes, prices, and SKUs is not use of a person's mind or pen and paper alone. *Id.* at 36. "[T]he methods of the '585 Patent could not conceivably be performed in the human mind or with pencil and paper. Even in a very simple and 'fanciful' example, one would still need a phone, computer with spreadsheet, archival ordering history, a UPC scanner, and countless other cross references (not including *Beverage Media*)." *Id.* at 39.

Patent Owner adds that *Beverage Media*'s geographic area of distributors is limited and that it is unclear which distributors serve which regions or areas. *See id.* at 38. Patent Owner contends that

> [p]rior to the '585 Patent and its instructions how to use electronic location data such as [Global Positioning System (GPS)] or metadata, merchants simply could not identify distributors in a time-effective and reliable way. Prior to the patent, there was no way for a retailer to identify which distributor served their region, and which brands that distributor carried, other than to wait for sales representatives, unreliable word of mouth, and unreliable internet research. Accordingly, even using *Beverage Media*, the identification of distributor steps required in all independent claims (Claims 1, 6, and 14) cannot be performed.

Id. at 38–39.

c) Discussion

We view claim 1 based on the full trial record as illustrative of the challenged claims. Claim 1 recites "[a] method of optimizing computerized inventory orders over a distributed network." Ex. 1001, 13:35–36. The method comprises:

> *receiving*, from a first user device connected to the distributed network, *a list of one or more products, the list including a par value and an inventory value associated with each of the one or more products*, the par value and inventory value corresponding to a single delivery location;
>
> responsive to *receiving the list of one or more products, determining,* by one or more processors*, an inventory order for the single delivery location based*, *at least in part, on the associated par value and the associated inventory value of each of the one or more products*;
>
> *receiving*, from a second user device connected to the distributed network, *a set of available promotions*;
>
> responsive to *receiving the set of available promotions, transmitting*, over the distributed network by the one or more processors, *the set of available promotions associated with at least one of the one or more products* to the first user device;
>
> *receiving*, from the first user device, *a selection of at least one promotion of the set of available promotions*;
>
> automatically *adjusting*, by the one or more processors*, a price of at least one of the one or more products associated with the at least one promotion to the inventory order*;
>
> *outputting* to a display on the first user device, *an updated inventory order including the adjusted price of the at least one of the one or more products associated with the at least one promotion*;

> *receiving*, by the one or more processors, *a user confirmation for the updated inventory order for delivery of the one or more products to the single delivery location*;
>
> *identifying*, by the one or more processors, *respective distributors associated with each product of the one or more products within the updated inventory order*, *wherein each of the products is associated with a single distributor*;
>
> *generating*, by the one or more processors, *a plurality of distributor specific inventory orders for each distributor identified as providing a product within the updated inventory order*, wherein the plurality of distributor specific inventory orders each include a different format; and
>
> *transmitting* by the one or more processors, *the plurality of distributor specific inventory orders to each of the identified distributors for fulfillment of the updated inventory order for the delivery location*.

Ex. 1001, 13:37–14:15 (emphases added). As we determined in the Institution Decision, the combination of the elements italicized above recites the concept of "facilitating the purchase of items by collecting (e.g., receiving a list of products, inventory orders, and promotions), analyzing (e.g., identifying respective distributors, adjusting price based on promotions, generating orders, and confirming orders), and transmitting information related to inventory, promotions, and particular sellers." Dec. 34.

Based on the full trial record, we remain persuaded that the claimed inventions serve as an intermediary between merchants (e.g., restaurant or bar owners), suppliers, and distributors of alcoholic beverages. Ex. 1001, 1:22–36. Serving as a facilitating intermediary between parties in the sale of alcoholic beverages is reflected in the language of claim 1, which recites the receipt, analysis (e.g., identifying and adjusting), and transmission of

inventory orders and promotions between device users and distributors. *See id.* at 13:65–14:15. As discussed in the Institution Decision, the '585 patent teaches, for example, that "embodiments described herein provide a *central hub* for both large, integrated supplies and distributors as well as small, independent suppliers and distributors." Dec. 35 (citing Ex. 1001, 2:64–67). Similarly, the Background of the '585 patent provides that the traditional systems for managing beverage inventories were fragmented, with each party to the system maintaining a distinct interface. *See* Ex. 1001, 1:22–36.

As noted above, Patent Owner argues that "[a central hub] is not a practice with a long-standing or ancient origin, but instead arose only in the 2010s as the result of a problem that was created in 1933." PO Resp. 31.

Nonetheless, we maintain, based on the complete record, that the Federal Circuit has found similar concepts to be abstract ideas. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52 n.13. As discussed in the Institution Decision, *Credit Acceptance* involved system and method claims directed to "provid[ing] financing for allowing a customer to purchase a product selected from an inventory of products maintained by a dealer." *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1047 (Fed. Cir. 2017) (alteration in original). There, the claims were directed to "maintaining a database of information about the items in a dealer's inventory, obtaining financial information about a customer from a user, combining these two sources of information to create a financing package for each of the inventoried items, and presenting the financing packages to the user." *Id.* at 1054. The Federal Circuit determined that there was "no meaningful distinction between this type of financial industry practice and 'the concept of intermediated settlement' held to be abstract in *Alice* . . . or the 'basic concept of hedging' held to be abstract in *Bilski*." *Id.*

Like *Credit Acceptance*, claim 1 recites generic computer elements (e.g., "user device," "network," "display," and "processor") that facilitate the financial transactions between parties through a third-party intermediary. *See* Ex. 1001, 13:35–14:15. Therefore, we continue to view claim 1 as similarly concerned with a method of organizing human activity, specifically a fundamental economic practice, which is an abstract idea. *See Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) ("The idea that a customer may pay for items ordered from a remote seller at a third-party's local establishment is the type of fundamental business practice that, when implemented using generic computer technology, is not patent-eligible under *Alice*."); *see also Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (determining that neither the patent owner "nor any other entity is entitled to wholly preempt" the basic concept of processing information through a clearinghouse).

Patent Owner contends that the use of a centralized system or central hub to facilitate the purchase of beverages "is not the same as using an intermediary like a clearinghouse (found to be a fundamental economic practice in *Alice*)." PO Resp. 29. Patent Owner asserts that

> [a] clearinghouse provides security for a transaction by validating a single transaction—ensuring that the buyer buys and the seller sells. "Clearinghouse," *Investopedia*, available at https://www.investopedia.com/terms/c/clearinghouse.asp.

Id. at 29. Patent Owner further contends that "using a centralized system or central hub to facilitate one specific type of product ordering: ordering of beverages from distributors, . . . has nothing to do with security or reducing risk of a transaction, but instead concerns match-making between retailers and distributors of beverages." *Id.*

First, we note that claim 1 does not expressly recite a "centralized system" or "central hub" as Patent Owner contends. Rather, claim 1, as discussed, recites generic computer elements (e.g., "user device," "distributed network," "display," and "processor[]") that facilitate the financial transactions between parties through a third-party intermediary. *See* Ex. 1001, 13:35–14:15. Generally, the Federal Circuit has instructed that an "invention's 'communication between previously unconnected systems,'" such as a "dealer's inventory database, a user credit information input terminal, and creditor underwriting servers" in *Credit Acceptance*, does not amount to an improvement in computer technology. 859 F.3d at 1055.

Second, we observe that even if recited, we are not persuaded that a purported "central hub" or "centralized system" is distinguishable from a clearinghouse as defined by Patent Owner. At https://www.investopedia.com/terms/c/clearinghouse.asp, a "clearinghouse" is described broadly as "a designated intermediary between a buyer and a seller in a financial market." Ex. 3002.[6] While the cited website discusses other features that a clearinghouse may provide, such as security or efficiency, fundamentally, "[i]ts role is to accomplish the steps that finalize, and therefore validate, the transaction." *Id.* The steps recited in claim 1 amount to exactly that. For example, claim 1 recites "generating . . . a plurality of distributor specific inventory orders for each distributor identified as providing a product within the updated inventory order" and then the "transmitting [of] the plurality of distributor specific inventory

[6] Akhilesh Ganti, Clearinghouse, Investopedia (accessed March 16, 2022), https://www.investopedia.com/terms/c/clearinghouse.asp.

orders to each of the identified distributors *for fulfillment of the updated inventory order for the delivery location*." Ex. 1001, 13:6–14:15 (emphasis added). In other words, these steps are consistent with the finalizing and validating of the transaction carried out by a clearinghouse. *See* Ex. 3002.

Furthermore, we are not persuaded that "[f]acilitating the purchase of items by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers" is not an abstract idea because it "requires multiple steps that may or may not be implicated (collecting, analyzing, and transmitting) for information from multiple sources that may or may not be used (inventory, promotions, distributors, i.e., 'particular sellers')." PO Resp. 33–34. Contrary to Patent Owner's position, we do not agree that this abstract idea (or the claims) requires a complex or complicated, multi-step process. Rather, the claims are directed to the collecting, analyzing, and transmitting of information. Claim 1, for example, requires only a list and inventory order of "one or more products" (i.e., the claim may be satisfied with only a single product). The Federal Circuit has explained that, generally, "claims focused on 'collecting information, analyzing it, and displaying certain results of the collection and analysis' are directed to an abstract idea." *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (quoting *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). "Information as such is an intangible," hence abstract, and "collecting information, including when limited to particular content (which does not change its character as information), [i]s within the realm of abstract ideas." *Electric Power*, 830 F.3d at 1353 (citing cases). Thus, even assuming that different types of information may be implicated by a claim limitation, the fact remains that the type or source of information, e.g., inventory, promotions, distributors,

particular sellers, does not make that collection, analysis, or transmission of information any less abstract. *Id.* at 1353, 1355 (citing cases).

As discussed in our Institution Decision, our Guidance further instructs that the abstract idea exception includes mental processes, such as "concepts performed in the human mind . . . (including an observation, evaluation, judgment, opinion)." 2019 Revised Guidance, 84 Fed. Reg. at 52. Such concepts must be capable of being practically performed in the human mind, although the use of a physical aid, such as a pen and paper or a computer does not negate the mental nature of such a concept. October 2019 Update 8–9; *see also Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) ("[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper." (*quoted in* 2019 Revised Guidance, 84 Fed. Reg. at 52 n.14) (alteration in original)).

Notably, in *Mortgage Grader, Inc. v. First Choice Loan Services Inc.*, 811 F.3d 1314, 1318 (Fed. Cir. 2016), the court analyzed whether a system that matched a borrower's calculated credit grading with lenders' loan packages while the borrower remained anonymous was directed to non-statutory subject matter. The Federal Circuit determined that "[t]he 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." *Id.* at 1324.

Similar to the claims in *Mortgage Grader*, claim 1 of the '585 patent recites a "processor," "device," "network," and "display," yet the performance of the steps identified above are those of a mental process, i.e., determining an inventory order, adjusting the price of the order based on available promotions, providing the updated order, confirming the updated order, identifying distributors, and transmitting the order to distributors for fulfillment, albeit performed with the use of a computer as a tool. *See* Ex. 1001, 13:35–14:15; Pet. 53–56, 59–60. Thus, consistent with the Guidance and case law, we conclude based on the full trial record that claim 1 recites mental processes (i.e., concepts performed in the human mind, such as an observation, evaluation, judgment, and opinion), which are abstract ideas. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52; October 2019 Update 7–9; *Electric Power*, 830 F.3d at 1353–54 (concluding claims directed to "collecting information, analyzing it, and displaying certain results of the collection and analysis" were abstract); *SAP Am.,* 898 F.3d at 1167 (concluding claims were directed to the abstract idea of "selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis"); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1361–62 (Fed. Cir. 2015) (determining claims reciting obtaining statistics and analyzing those statistics to determine another piece of information–i.e., a price at which to sell a product–were directed to the abstract idea of "offer-based price optimization").

In addition, based on the complete record, we are not persuaded that the challenged claim limitations cannot be practiced in mental steps or with a pen and paper. *See* PO Resp. 35. Patent Owner contends that "[a] retailer cannot identify distributors for products out of their mental processes. Nor could a retailer discover the identities of distributors no matter how much

pen and paper was supplied." *Id.* at 35–36. Patent Owner adds that "prior to the invention of the '585 Patent identifying distributors was an imperfect process—sometimes a bar or restaurant could not carry a particular brand or product at all because it had no relationship with a distributor or means to identify that distributor to develop such a relationship." *Id.* at 36 (citing Ex. 2002 ¶ 8 (Smith declaration)). Patent Owner contends that "the complexity of the ordering process—which requires selection of varying quantities of products from thousands of discrete SKUs—precludes the use of mental processes alone or pencil and paper." *Id.* Patent Owner also asserts that "[p]rior to the '585 Patent and its instructions how to use electronic location data such as GPS or metadata, merchants simply could not identify distributors in a time-effective and reliable way." *Id.* at 39 (citing *TQP Dev., LLC v. Intuit Inc.*, No. 2:12-CV-180-WCB, 2014 WL 651935 (E.D. Tex. Feb. 19, 2014)).

Yet, Patent Owner concedes that after the end of Prohibition in 1933, alcoholic beverages have been manually sold in the three-tiered structured market place. *See* Ex. 2002 ¶ 4 ("Prohibition eventually ended . . . [but] many states have a three-tiered system in which suppliers may not sell directly to merchants, but instead sell to independent distributors. These distributors then sell to merchants, who then sell to the public."). In fact, the Specification of the '585 patent explains that the purchase of alcoholic beverages readily occurred after Prohibition through the three-tiered system between merchants/retailers and suppliers through local distributors. *See* Ex. 1001, 1:22–36. And, Mr. Cool and Mr. Albenze testified to the same. Ex. 2001 ¶ 8 ("Merchants must work with multiple distributors, typically a dozen or more, in order to fully stock their shelves."); Ex. 1030 ¶¶ 16, 19–20, 24–30. Thus, the record on the whole is consistent with the position that

distributors, suppliers, and retailers could be identified by one another to manually execute the sale of alcohol sales in the three-tiered marketplace after 1933 and well before the challenged claims of the '585 patent. *See id.*

Moreover, contrary to Patent Owner's argument, collecting information from outside sources using references or a telephone, or using *Beverage Media's* sizes, prices, and SKUs also can be considered mental processes performed by the human mind or with pen and paper. "The concept of data collection, recognition, and storage is undisputedly well-known. Indeed, humans have always performed these functions." *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). Further, "merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas." *See Electric Power*, 830 F.3d at 1355.

Further, we disagree with Patent Owner that "[p]rior to the patent, there was no way for a retailer to identify which distributor served their region, and which brands that distributor carried, other than to wait for sales representatives, unreliable word of mouth, and unreliable internet research." PO Resp. 38–39. Mr. Albenze's testimony provides that the *Beverage Media* publication "was then and is now a catalog that publishes beverage alcohol information and the associated distributors for beverage alcohol brands and their location and contact information so retailers could place orders." Ex. 1030 ¶ 21. Mr. Albenze explains that the *Beverage Media* publication "was issued monthly, and it contained information about beverage alcohol products, pricing, and available promotions." *Id.* While Patent Owner contends that *Beverage Media*'s geographic area of

distributors is limited, Patent Owner did not cross-examine Mr. Albenze, whose uncontested testimony provides that he personally used this publication to place beverage orders. *See id.* ¶¶ 19–23.

We also are not persuaded otherwise by Patent Owner's citation to the nonbinding district court decision in *TQP Dev., LLC v. Intuit Inc.*, No. 2:12-CV-180-WCB, 2014 WL 651935 (E.D. Tex. Feb. 19, 2014). In *TQP Dev.*, claim 1 was directed to

> a method for transmitting encrypted data over a communication link by (1) inputting a seed value to identical pseudo-random number generators in the transmitter and receiver, (2) using the pseudo-random number generators to generate identical new key values at the transmitter and receiver, and (3) changing the key values at the transmitter and receiver at a time dictated by a predetermined condition of the data being transmitted; specifically, by changing the key value each time a predetermined number of blocks of data are transmitted.

Id. at *1. There, the district court denied the defendant's summary judgment motion and determined, among other things, that there was a factual dispute as to whether "a pseudo-random number generator can be devised that relies on an algorithm that can be performed mentally, or readily with pencil and paper" that could not be resolved by summary judgment. *Id.* at *5 ("That factual dispute by itself is enough to foreclose the entry of summary judgment in the defendants' favor on the present record."). In doing so, the court also commented that the claims at issue in *TQP Dev.* involved "a several-step manipulation of data that, except perhaps in its most simplistic form, could not conceivably be performed in the human mind or with pencil and paper." *Id.* at *4. In contrast, the record in the instant proceeding is replete with evidence that the purchase of alcoholic beverages occurred between retailers, suppliers, and distributors in the post-Prohibition three-

tiered marketplace. In other words, retailers have been (and continue to be able to) identify local/regional distributors by pen and paper. *See* Ex. 1030 ¶¶ 19–23.

In view of the foregoing, we agree with Petitioner that claim 1 recites an abstract idea. Petitioner and Patent Owner present similar arguments for independent claims 6 and 14. Pet. 52–64; *see generally* PO Resp. For the same reasons discussed for claim 1, we are persuaded that independent claims 6 and 14 recite a similar abstract idea. We do note, however, that claims 6 and 14 do not recite or require a "promotion." Nevertheless, as we determined in the Institution Decision, we do not find that this difference in Petitioner's articulated abstract idea impacts our determination that the abstract idea (with or without "promotions") is a fundamental economic practice or mental process. *See* Dec. 40.

Additionally, Petitioner argues that dependent claims 2–5, 7–13, and 15–19 also are directed to the abstract idea of facilitating the purchase of items by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers, and "add nothing of significance" to the independent claims. Pet. 65–69 (citing Ex. 1008 ¶¶ 92–93). Patent Owner in its Response does not respond specifically to Petitioner's arguments regarding the dependent claims at Step 2A, Prong 1. *See* PO Resp. 27–40. We determine that the dependent claims recite the same abstract idea as the independent claims.

We proceed to Prong Two of Step 2A to determine if the abstract idea is integrated into a practical application, in which case the claim as a whole would not be "directed to" merely an abstract idea.

4. Step 2A, Prong 2: Additional Elements that Integrate the Judicial Exception

The Supreme Court has long distinguished between abstract ideas themselves (which are not patent-eligible) and the integration of those abstract ideas into practical applications (which are patent-eligible). *See, e.g.*, *Alice*, 573 U.S. at 217 (explaining that "in applying the § 101 exception, we must distinguish between patents that claim the 'buildin[g] block[s]' of human ingenuity and those that integrate the building blocks into something more" (quoting *Mayo*, 566 U.S. at 89), and stating that *Mayo* "set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts"); *Mayo*, 566 U.S. at 80, 84 (noting that the Court in *Diehr* found "the overall process patent eligible because of the way the additional steps of the process integrated the equation into the process as a whole," but the Court in *Benson* "held that simply implementing a mathematical principle on a physical machine, namely a computer, was not a patentable application of that principle"). The Federal Circuit likewise has distinguished between claims that are "directed to" a judicial exception (which require further analysis to determine their eligibility) and those that are not (which are therefore patent-eligible). *See, e.g.*, *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–16 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

Consistent with Supreme Court and Federal Circuit precedent, the Guidance provides that, if a claim recites an abstract idea, it must be further analyzed to determine whether the recited judicial exception is integrated into a practical application. Guidance, 84 Fed. Reg. at 53. Specifically, under Step 2A, Prong 2 of the Guidance, a claim reciting an abstract idea is

not "directed to" the abstract idea "if the claim as a whole integrates the recited judicial exception into a practical application of that exception." *Id.* Step 2A, Prong 2 is evaluated by "(a) [i]dentifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application." *Id.* at 54–55. "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." *Id.* at 53.

Examples of limitations that are indicative of "integration into a practical application" can include:

> 1) Improvements to the functioning of a computer, or to any other technology or technical field —*see* MPEP §§ 2106.04(d), 2106.05(a);
>
> 2) Applying the judicial exception with, or by use of, a particular machine —*see* MPEP §§ 2106.404(d), 2106.05(b);
>
> 3) Effecting a transformation or reduction of a particular article to a different state or thing —*see* MPEP §§ 2106.404(d), 2106.05(c); and
>
> 4) Applying or using the judicial exception in some other 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 §§ 2106.404(d), 2106.05(e).

In contrast, limitations that are not indicative of "integration into a practical application" may merely include:

1) Adding the words "apply it" (or an equivalent) with the judicial exception, or mere instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea —*see* MPEP §§ 2106.404(d), 2106.05(f);

2) Adding insignificant extra-solution activity to the judicial exception —*see* MPEP §§ 2106.404(d), 2106.05(g); and

3) Generally linking the use of the judicial exception to a particular technological environment or field of use —*see* MPEP §§ 2106.404(d), 2106.05(h).

a) Petitioner's Contentions

Petitioner argues that claim 1 of the '585 Patent does not integrate the recited abstract idea into a practical application. Pet. 70–74. Petitioner argues that claim 1 only recites computer components, namely a "first user device," a "display" on the first user device, a "second user device," a "distributed network," and one or more "processors," at a high level of generality. *Id.* at 70 (citing Ex. 1008 ¶¶ 23–24, 40–52). Petitioner adds that the claim elements "merely communicate certain 'information' back and forth between the first user device and one or more processors of the claim, and between the one or more processors and the second user device and distributors." *Id.* (citing Ex. 1008 ¶¶ 44–48). Further, Petitioner asserts that the '585 patent also does not describe the "first user device," "display" on the first user device, "second user device," "distributed network," and one or more "processors" as being anything more than generic in nature. *Id.* at 70–71 (citing Ex. 1008 ¶ 23). Petitioner contends that these generic components are "merely invoked as tools in facilitating a purchase of items by the first user device from the distributor." *Id.* at 72–73. Additionally, Petitioner argues that

> [u]nlike the claims in *Enfish*, the '585 Patent claims do not improve computer functionality. To the contrary, the independent claims of the '585 Patent recite a series of simple steps that could be, and long have been, performed manually or mentally. Albenze Dec. ¶¶19–30. The claims do not recite any functionality or features that purport to improve computer technology or the performance of a computer. Min Dec. ¶91, 98–130. Nor do the claims or specification disclose any particular software, programming details, code, or any other specifics on how the claims accomplish their steps, which reinforces that only generic and conventional computer technology is required. Min Dec. ¶¶94–95. Rather, the claims appear to cover the mere automation of a sales order process that has occurred for generations. Albenze Dec. ¶¶31–32.

Id. at 77–78.

Petitioner provides similar arguments for independent claims 6 and 14, and dependent claims 2–5, 7–13, and 15–19. *See* Pet. 74–79.

b) Patent Owner's Contentions

Patent Owner argues that even if generic, the components recited in the claims are arranged in an unconventional way to achieve a non-generic result.[7] PO Resp. 42–43; PO Sur-Reply 11–16. Patent Owner contends that

> [a]t the time of the invention, the well-understood, routine, and conventional way to manage beverage inventory was to use a generic computer to generate a spreadsheet to track inventory and distributors associated with each product in inventory, and then make orders based on that spreadsheet during sales calls with distributors.

PO Resp. 43. Patent Owner adds that each merchant and distributor had respective systems that did not communicate with each other. *Id.* (citing

[7] Patent Owner's arguments are phrased in terms of whether the claims provide an inventive concept (Step 2B), but relate to many of the considerations for whether the claims contain additional elements that integrate the abstract idea into a practical application (Step 2A, Prong 2). Thus, we consider Patent Owner's arguments at both steps of the analysis.

Ex. 1002 ¶ 70). "As such to place an order, a merchant would be required to visually inspect current inventor[y], compare with desired value, and then contact each distributor separately to place an order for a particular product." *Id.* (alteration in original). Patent Owner contends that this process was time consuming, incomplete, and error-prone for both retailers and distributors because "retailers had to call each distributor to place orders, and distributors would be inundated with calls from multiple retailers." *Id.* According to Patent Owner, distributors would also miss promotions released after orders were placed. *Id.* at 44.

Patent Owner asserts that these technical problems of error, time, and efficiency were solved by a technical solution in the claims of the '585 patent, which provided an "integrated network, centralized system, and/or central hub." PO Resp. 44. According to Patent Owner, "[c]laims 1, 5, 6, 13, [and] 14 all include features that increase the efficiency of existing ordering technology—conventional technology in the industry could not address the different ordering formats used by different distributors." *Id.* Patent Owner adds that these "claims explain how to use computer technology in a non-conventional way: generating sub-orders in different formats for different distributors such that all orders may be placed simultaneously." *Id.* Patent Owner asserts that

> Claim 6 describes how to register distributor information that can then be used to generate orders for that distributor more efficien[tly]. Claim 13, a dependent claim of Claim 6, further explains that by determining the software used by each distributor, formats for orders can be adjusted. Claims 1, 11, 14 also teach how to use the centralized or integrated network to transmit order confirmations or transmit promotional information, and thereby reduce errors.

Id. at 44–45. Patent Owner adds that "[c]laims 1, 6, 8, [and] 14 teach how to identify the proper distributor using electronic location information or metadata." *Id.* at 45 ("[A]s described in the specification, GPS data from a user device can alter the content management system of location and correctly identify the appropriate distributor of a product.") (citing Ex. 1001, 9:49–51).

Patent Owner further asserts that *Beverage Media* does not actually identify distributors for a particular retailer based on location; and even if it did, "use of Beverage Media is not routine or conventional activity in the industry" because it had extremely limited circulation. *Id.* at 45–46 (citing Ex. 2001 ¶ 18; Ex. 2002 ¶ 6). Patent Owner further argues that our preliminary discussion in the Institution Decision is incorrect because our analysis "leaves no room at all for *any* patent for *any* computer-based application." *Id.* at 46–47 (citing *Enfish*, 822 F.3d at 1336 (holding that claims were not directed to an abstract idea where they were directed to a "specific improvement to the way computers operate")).

Patent Owner further contends that the challenged claims do not monopolize any abstract idea. *Id.* at 47 ("The use of electronic location data, such as GPS, within an integrated system to determine the appropriate distributor of an alcoholic beverage is specific, not general."). Patent Owner adds that the claim limitations do not monopolize the entire field of identifying distributors of beverages. *Id.* "Rather, the claims recite specific types of information (orders, promotions, prices, electronic location metadata) that are to be transmitted and specific steps for transmitting that information (such as receiving promotional information, adjusting prices, and then outputting that information, or transmitting specific order information to identified distributors)." *Id.*

c) Discussion

Based upon the complete trial record, we determine that the claims of the '585 patent do not integrate the alleged abstract idea into a practical application.

We start with illustrative claim 1. As discussed above, claim 1 recites generic computer components, namely a "first user device" with a "display," a "second user device," and "one or more processors" connected to a "distributed network." *See* Ex. 1001, 3:11–13, 13:35–14:15. Additionally, the other limitations of claim 1 do not impart any technological detail, and thus, no technological improvement, into the fundamental economic practice of facilitating the purchase of items by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers.

Again, Patent Owner argues that technical problems of error, time, and efficiency were solved by a technical solution in the claims of the '585 patent, which provided an "integrated network, centralized system, and/or central hub." PO Resp. 44.

Based on the complete record, however, we determine that the problems described by Patent Owner are business-related or non-technical issues. *See id.* at 49. Patent Owner's declarant, Joe Cool, describes problems in the beverage market associated with the three-tiered structure and regional restrictions placed on the industry. Mr. Cool testifies that

> [t]he distribution of alcoholic beverages is subject to *state laws and regulations*. A majority of states have enacted a three-tiered system for alcohol sales. These three tiers are suppliers, distributors, and merchants. Suppliers manufacture (i.e., distill, brew, or ferment) alcoholic beverages. Suppliers then enter into exclusive arrangements with distributors for distributors to sell alcoholic beverages to merchants (any establishment with a

> liquor license, *i.e.* bars, restaurants, liquor stores). Suppliers may, and often do, communicate directly with merchants to promote their products and created demand. *However, the three-tiered structure prevents suppliers from selling directly to merchants, merchants may only purchase products through distributors*.

Ex. 2001 ¶ 3 (emphases added). Mr. Cool further explains that "[s]upplier-distributor arrangements are *limited to specific geographic areas due to state regulations*" and that "merchants did not use, or have access to, distributor's software . . . [and] a sales representative would have to rely on the merchant's tracking of inventory, or conduct a visual inspection of inventory during a sales call." *Id.* ¶¶ 4, 6. As such, we understand Mr. Cool to describe the many inefficiencies and errors allegedly resulting from restricted contact and access between various entities in the beverage market. *See id.* ¶¶ 3–10.

Likewise, Mr. Smith testifies that

> [e]rrors in orders include incorrect beverages, incorrect amounts, and missed promotions. Because sales calls with distributors' sales representatives are time-intensive, distributors are often inundated with calls for multiple merchants. Therefore, order confirmations are not commonplace, as they require a second call. Similarly, if a merchant learned of an existing promotion after a sales call, its only option was to attempt call the sales representative, who typically did not return calls due to being busy with sales calls for other merchants.

Ex. 2002 ¶ 10. Thus, instead of being specific to a technological problem (e.g., a technical deficiency in electronic or computer systems in use at the time), these challenges appear to be business-related and non-technical in nature due to the post-Prohibition restrictions placed on the alcohol beverage market.

Moreover, as discussed, the functionality of each component in the challenged claims is recited at a high level of generality in which the components receive, adjust, generate, and transmit information between users (e.g., merchants, suppliers, and distributors). For example, claim 1 recites that "*one or more processors*" perform the functions of: "determining . . . an inventory order for the single delivery location based, at least in part, on the associated par value and the associated inventory value of each of the one or more products"; "transmitting, over the distributed network . . . the set of available promotions"; "adjusting . . . a price of at least one of the one or more products"; "receiving . . . a user confirmation for the updated inventory order for delivery . . . to the single delivery location"; "identifying . . . respective distributors associated with each product"; "generating . . . specific inventor orders [that] each include a different format"; and "transmitting" the order "for fulfillment of the updated inventory order for a delivery location." *See* Ex. 1001, 13:35–14:15. However, no further technical details are recited in claim 1 that explain how the processors perform these functions (e.g., formatting).

In addition, the Specification expressly teaches that the "processors" (e.g., claims 1 and 6) can be generic "microprocessors, communications and network processors, etc." Ex. 1001, 10:66–67. And Petitioner's declarant, Dr. Min, testifies that (1) manipulating and transforming data from one format into another, and (2) determining a location based on geographical information were both generic functions of generic processors or computer components. Ex. 1008 ¶¶ 92–93 (citing Ex. 1020 ¶¶ 42, 67; Ex. 1019, 13:41–15:30). Dr. Min's testimony is supported by and consistent with the functional language of claim 1 and the Specification's description of "processors." Thus, we are not persuaded by Patent Owner that these

generic features overcame any purported technological problems. *See, e.g.*, *cxLoyalty, Inc. v. Maritz Holdings Inc.*, 986 F.3d 1367, 1378–79 (Fed. Cir. 2021) ("[T]he claims provide no useful guidance as to how this purported function [of using a hidden program account to facilitate a transaction between a participant and a vendor] is achieved and thus cannot be directed to a technological solution.").

Patent Owner directs us to *Enfish*, 822 F.3d at 1335, for the proposition that "[w]hat is inventive, and patentable, is how to design a computer, or computer system, in [a] way that improves efficiency or efficacy of the receipt, analysis, generation, transmission, or display of data." PO Resp. 46. Indeed, a specific improvement to the way computers operate does not constitute an abstract idea. *Enfish*, 822 F.3d at 1335. Nonetheless, we are not persuaded that any parallel exists between the challenged claims and the claims at issue in *Enfish*.

In *Enfish*, the Federal Circuit held that claims reciting a self-referential table for a computer database were not directed to an abstract idea under step one of the *Mayo/Alice* framework, and were patent eligible, because the claims were directed to an improvement in computer functionality. *Enfish*, 822 F.3d at 1336. The specification described the benefits of using a self-referential table—faster searching and more effective data storage—and highlighted the differences between the claimed self-referential table and a conventional database structure. *Id.* at 1333, 1337. The Federal Circuit, thus, rejected the district court's characterization of the claims as directed to the abstract idea of "storing, organizing, and retrieving memory in a logical table," *id.* at 1337, emphasizing that the key question is whether the focus of the claims is on the specific asserted improvement in

computer capabilities or, instead, on a process that qualifies as an abstract idea for which computers are invoked merely as a tool. *Id.* at 1335–36.

Here, claim 1, for example, recites generic computers and processors arranged in no particular way to perform basic functions of receiving, identifying, generating, adjusting, and transmitting information. The Specification's description of the claimed computer or processor indicates that generic computer components are utilized as tools to implement the abstract idea in an online environment, rather than improving the functioning of the computer or processor. *See* Ex. 1001, 3:9–17, 10:65–68, 11:55–57. "[T]o be directed to a patent-eligible improvement to computer functionality, the claims must be directed to an improvement to the functionality of the computer or network platform itself." *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020) (citing *Enfish*, 822 F.3d at 1336–39). However, on the record presented, claim 1 of the '585 patent does no more than use instructions to implement the abstract idea on generic computers.

This analysis equally applies to independent claims 6 and 14, as well as dependent claims 8, 11, and 13. Patent Owner argues that claim 6 "describes how to register distributor information"; claim 13 determines "software used by each distributor . . . [and] formats for orders"; claims 1, 11, and 14 describe "how to use the centralized or integrated network to transmit order confirmations or transmit promotional information," and claims 1, 6, 8, and 14 use GPS or metadata to "identify the proper distributor." PO Resp. 44–45.

However, these limitations merely use a computer as a tool to perform the abstract idea. For instance, claim 6 recites "registering, by one or more processors, a merchant with a content management system containing

beverage products, distributor, sales representative, and supplier information" and "responsive to registering the merchant, determining a location of the merchant based on electronic location information." Ex. 1001, 14:43–49. But there is no detail in these limitations or otherwise of how the processor or content management is functionally or structurally improved. Generally, registering information with a processor in a content database is akin to storing information in a database, which does not constitute an improvement of the computer functionality. *See BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1287–1288 (Fed. Cir. 2018) (finding that improved use of a database to store and retrieve information does not show improvement to the database's functionality). Also, as discussed, the use of a general purpose computer, such as the recited "one or more processors," that applies the judicial exception, by use of conventional computer functions, does not integrate the judicial exception into a practical application. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716–717 (Fed. Cir. 2014). And, as discussed in the Institution Decision, Patent Owner acknowledges that "GPS is conventional." *See* Dec. 54.

Similarly, claim 1 recites generating distributor specific inventory orders in "different format[s]," claim 14 recites generating "sub-orders" for different distributors, and claim 13 recites determining a "purchase request software format" for a first identified distributor and "converting the purchase request into a format that is compatible with [that] purchase request software format." These limitations regarding "format" are recited at a high degree of generality, do not provide any detail as to *how* different formats are used or *how* format conversion is accomplished, and do not show that the claims improve the use of computers as a tool. *See cxLoyalty*, 986 F.3d at 1378–1379 ("[The patent owner] does not contend that the claimed

invention improves the use of computers as a tool by reciting a new way for computers to conduct format conversion. Nor do the claims provide any guidance as to how this purported function is achieved."); *University of Fla. Res. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1368–69 (Fed. Cir. 2019) (holding claims relating to format conversion ineligible where the "drivers [were] described in purely functional terms" and the claims did not "explain[] how the drivers do the conversion that [the patent owner] points to" (emphasis omitted)). In short, the recited devices are recited functionally and generically to perform the same or substantially similar functions as those recited in claim 1.

In addition to our discussion above, we have also reviewed Petitioner's contentions and supporting evidence regarding the remaining independent claim 14, and dependent claims 2–5, 7–12, and 15–19. *See* Pet. 74–79 (citing, e.g., Ex. 1008 ¶¶ 28, 60, 62–67, 70, 72, 74–95); *see also id.* at 76 ("Generic application software was capable of converting data and content format.") (citing Ex. 1008 ¶¶ 63, 93).

For those claims, Patent Owner primarily relies on the arguments discussed above. *See* PO Resp. 45 ("Claims 1, 11, [and] 14 also teach how to use the centralized or integrated network to transmit order confirmations or transmit promotional information, and thereby reduce errors . . . [and] [c]laims 1, 6, 8, [and] 14 teach how to identify the proper distributor using electronic location information or metadata.").

For the same reasons discussed above, we determine that Petitioner's evidence and analysis demonstrate persuasively that the additional elements of the challenged claims, both individually and as an ordered combination, do not integrate the recited judicial exception (i.e., fundamental economic

practice or mental process) into a practical application. Next, we turn to Step 2B of the analysis.

5. Step 2B: Whether Any Additional Elements Recite Significantly More

Under the second step of the *Alice* inquiry, we must "scrutinize the claim elements more microscopically" for additional elements that might be understood to "transform the nature of the claim" into a patent-eligible application of an abstract idea. *Electric Power Grp.*, 830 F.3d at 1353–54; *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) ("To save a patent at [*Alice*] step two, an inventive concept must be evident in the claims."). That is, we determine whether the claims include an "inventive concept," i.e., an element or combination of elements sufficient to ensure that the patent in practice amounts to significantly more than a patent on the abstract idea itself. *Alice*, 573 U.S. at 221. "Abstract ideas . . . may be patent-eligible if they contain an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *In re Smith*, 815 F.3d 816, 819 (Fed. Cir. 2016) (citing *Alice*, 573 U.S. at 221–22). But appending purely conventional steps to an abstract idea does not supply a sufficiently inventive concept. *Alice*, 573 U.S. at 221–23.

Consistent with the foregoing, under the Guidance, if a claim has been determined to be directed to a judicial exception under the Guidance, Step 2A, we must evaluate the additional elements individually and in combination under the Guidance, Step 2B, to determine whether they provide an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself).[8] Per the Guidance, we must

[8] The patent eligibility inquiry may contain underlying issues of fact. *Mortgage Grader*, 811 F.3d at 1325. In particular, "[t]he question of

consider in Step 2B whether an additional element or combination of elements: (1) "[a]dds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present"; or (2) "simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present." 2019 Revised Guidance, 84 Fed. Reg. at 56.

Petitioner argues that the elements of the claims of the '585 patent, taken both individually and as an ordered combination, do not amount to "significantly more" than the abstract idea of facilitating the purchase of items by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers. Pet. 79–87.

Patent Owner contends Petitioner's analysis improperly oversimplifies the steps of the claims of the '585 patent. PO Resp. 48. Patent Owner asserts that, even if generic, the computer components are arranged in an unconventional way to achieve a non-generic result that overcomes the problems of the prior art. *See id.* at 41–47; PO Sur-Reply 11–16. Patent Owner further argues

> [t]he claims have inventive concepts that result from the arrangement of features in an unconventional way to solve problems in the industry attributable to use of conventional methods. These inventive concepts that overcome conventional problems include reducing errors in promotions, providing order confirmation, using electronic location information or metadata to identify distributors, or generating simultaneous orders or sub-

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whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

> orders, particularly through the use of a content management system.

PO Resp. 49–50.

As discussed, the claims "must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer." *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). Patent Owner contends that Petitioner's arguments and evidence are presented more as an obviousness challenge than one based on Section 101. *See* PO Resp. 48–49. Petitioner's evidence and analysis, however, persuade us that the additional elements of the claims, both individually and as an ordered combination, do not transform the nature of the claims into a patent-eligible application, and that they simply add well-understood, routine, and conventional activity to the abstract idea. *See* Pet. 79–87. In particular, as explained above with respect to the technological invention exception, Petitioner's evidence sufficiently shows on the record presented that it was conventional to use generic computer components such as devices, displays, networks, and processors to receive, analyze, generate, format, and transmit data, as recited in claim 1, for example. *See id.* at 70–74. We further noted above that Petitioner's arguments and supporting evidence are consistent with the '585 patent's description of generic computer components and functions. Ex. 1008 ¶¶ 103–121;[9] Ex. 1001, 3:9–25, 10:60–68, 11:55–57; *see also* Ex. 1008 ¶¶ 41–42; *see also* Pet. 74–79 (citing, e.g., Ex. 1008 ¶¶ 28, 60, 62–67, 70, 72, 74–95; Ex. 1013, 135; Ex. 1016, 5:13–15; Ex. 1017, 3:54–4:15, 5:40–45; Ex. 1018, 3:24–54, Fig. 10; Ex. 1019, 1:28–55, Fig. 8; Ex. 1020,

[9] We credit the portions of Dr. Min's testimony cited herein, as they are sufficiently explained and supported by evidence in the record.

Abstract, Fig. 1B, ¶¶ 31–33, 42, 67; Ex. 1024, 1; Ex. 1025 ¶¶ 212–221; Ex. 1030 ¶¶ 24–29). Thus, we do not agree with Patent Owner's assertions that the claimed steps add enough to make the claims patentable because the bare recitation of the steps performed by a generic processor at a high level of generality is insufficient to supply an inventive concept. *See Alice*, 573 U.S. at 223 ("[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention."); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (holding that the claims at issue, which "recite[d] both a generic computer element—a processor—and a series of generic computer 'components' that merely restate their individual functions, . . . merely describe the functions of the abstract idea itself, without particularity," which is "not enough under step two"); *Mortgage Grader*, 811 F.3d at 1324–25 (holding that "generic computer components do not satisfy the inventive concept requirement"); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) ("[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.").

Patent Owner also relies on *BASCOM* for the proposition that "[j]ust as leveraging [Internet service provider (ISP)] servers to filter internet content was not conventional, neither is leveraging GPS (or other electronic location data or metadata) to determine distributors conventional." PO Resp. 46.

The claims at issue in *BASCOM* were directed to a "content filtering system for filtering content retrieved from an Internet computer network," and to an "ISP server for filtering content." 827 F.3d at 1348. The Federal Circuit "agree[d] with the district court that filtering content is an abstract

idea because it is a longstanding, well-known method of organizing human behavior." *Id.* The court, however, found that when considered as a whole, the claims recited the inventive concept of "the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user." *Id.* at 1350. The court explained further that "[t]his design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server." *Id.*

Here, claim 1 recites generic components – "user device," "processors," "network," and display – that are conventional in their placement and use of these computer components. *See* Ex. 1001, 3:9–25, 10:65–68, 11:55–57; *see also* Dec. 54 (noting that Patent Owner acknowledges that "GPS is conventional"). To the extent that Patent Owner argues that the claims are like those in *BASCOM* because they reduced transaction errors and inefficiencies in the beverage industry, we observe that claim 1 does not provide the specific structure/technical details that indicate an improvement to computer software or hardware. As *BASCOM* recognized, claims like these that "merely recite the abstract idea . . . along with the requirement to perform it on . . . a set of generic computer components" do not contain an inventive concept. 827 F.3d at 1350. "An inventive concept . . . cannot simply be an instruction to implement or apply the abstract idea on a computer." *Id.* at 1349; *see Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1371 (Fed. Cir. 2015) ("Requiring the use of a 'software' 'brain' 'tasked with tailoring information and providing it to the user' provides no additional limitation beyond applying an abstract idea, restricted to the Internet, on a generic computer."); *see also University of Fla.*, 916 F.3d at 1368 ("The '251 patent 'fails to provide any technical details for the tangible components, . . . instead

predominantly describ[ing] the system and methods in purely functional terms.'" (alteration in original)).

Patent Owner further relies on *Amdocs Ltd v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) and *Exergen Corp. v. Kaz USA, Inc.*, 725 F. App'x 959 (Fed. Cir. 2018). PO Resp. 42–43. In *Amdocs*, the court held that "[claim 1] is eligible under step two because it contains a sufficient 'inventive concept.'" *Amdocs*, 841 F.3d at 1300. The claim at issue recited "computer code for using the accounting information with which the first network accounting record is correlated to enhance the first network accounting record." *Id.* at 1299. The court explained that the "claim entails an unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows [that] previously required massive databases)." *Id.* at 1300. The court noted that, although the solution requires generic computer components, "the claim's enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality." *Id.* at 1300–1301.

In *Exergen*, the claims recited a natural law of utilizing "readings from the forehead skin and the ambient temperature to calculate an approximate core body temperature." 725 F. App'x at 964. However, there was a "subset of three steps" recited in each of the claims: "(1) moving while laterally scanning . . . (2) obtaining a peak temperature reading . . . and (3) obtaining at least three readings per second" that were not conventionally used to measure body temperature. *Id.* at 964–65. Moreover, the patents in *Exergen* taught that "prior art detectors" were not adapted to perform these types of measurements. *Id.* at 962. In particular, the Federal Circuit noted

that "the measurement method here was not conventional, routine, and well-understood." *Id.* at 966.

Unlike the generic components at issue in *Amdocs* and the unconventional measurement method of *Exergen*, the generic components recited in claim 1 here do not operate in an unconventional manner to achieve an improvement in computer functionality. Rather, they receive, analyze, generate, transmit, and display data, which are basic computer functions that do not integrate the abstract idea into a practical application. *See Inventor Holdings*, 876 F.3d at 1378 (holding that considering claims reciting data retrieval, analysis, modification, generation, display, and transmission as an "ordered combination" reveals that they "'amount to 'nothing significantly more' than an instruction to apply [an] abstract idea' using generic computer technology" (alterations in original)).

Moreover, we are not persuaded by Patent Owner's argument that it was not conventional to use *Beverage Media* to identify distributors for beverage sales. Mr. Albenze testifies that he personally purchased beverage alcohol products from *Beverage Media*. More specifically, Mr. Albenze testifies that

> [r]etailers typically had subscriptions to Bev Media, as did distributors. Available promotions associated with beverage alcohol brands were published in Bev Media monthly. . . . The retailer selected the promotions based on the selection of the alcohol beverage brands it ordered through the distributor. . . . When I applied promotions to the inventory order for my retailer-account, I adjusted the price of the beverage alcohol products to account for the discount manually in 1990. . . . After the discount was applied, I would manually present an updated inventory order to the retailer due to the application of the promotion.

Ex. 1030 ¶ 19.

Mr. Cool contends that Mr. Albenze's practice of purchasing alcoholic beverages from *Beverage Media* was unconventional because *Beverage Media* "appears to cater only to high-end suppliers and brands and may not even include beer." Ex. 2001 ¶ 18. He concludes that he would not use *Beverage Media* because "[b]eer sales are integral to any retail establishment with a liquor license and for liquor stores beer is a key part of their cash flow." *Id.*

Between the two, we find that Mr. Albenze's testimony is better supported. Consistent with Mr. Albenze's testimony, Exhibit 1032 shows an excerpt of *Beverage Media* with the brands available for purchase in Connecticut in September 2020.[10] Ex. 1030 ¶ 21; *see generally* Ex. 1032. This excerpt includes prices and contact information for placing an order. *See* Ex. 1032, 3. While *Beverage Media* may have lacked beer sales, we observe that neither the challenged claims of the '585 patent or the abstract idea require beer sales. Indeed, the claims merely recite either "products" or "beverages" in general. The claims are directed to "facilitating the purchase of items by collecting, analyzing, and transmitting information related to inventory, promotions, and particular sellers." In this way, the manner of beverage purchase using *Beverage Media* described by Mr. Albenze supports Petitioner's position that identifying promotions and particular sellers by location was well-known and conventional.

[10] Although this copy is dated September 2020, Mr. Albenze testifies that the *Beverage Media* publication "dates back to 1938," was in "widespread use in the industry," "was issued monthly," and "contained information about beverage alcohol products, pricing, and available promotions." Ex. 1030 ¶¶ 20–21. Patent Owner does not direct us to anything in the record indicating that these statements are incorrect. We credit the portions of Mr. Albenze's testimony discussed herein.

That being so, and now based on the full trial record, we reiterate here what we stated at the institution stage—that there is no evidence that the claimed computer components are arranged in an unconventional manner. Accordingly, we determine that the limitations of claim 1, individually or in combination, do not "'transform the nature of the claim' into a patent eligible application." *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 78–79). Thus, reviewing these limitations, we find that Petitioner has shown by a preponderance of evidence that claim 1 is directed to an abstract idea, is not integrated into a practical application, and lacks an inventive concept.

Applying the same analysis for each limitation of independent claims 6 and 14, and their respective dependent claims, our conclusion does not differ from our above conclusion for independent claim 1. *See* Pet. 80–83 (analysis of dependent claims 2–5, 7–13, and 15–19). In sum, we also find Petitioner has shown these claims of the '585 patent are unpatentable under 35 U.S.C. § 101.

6. Conclusion for Subject Matter Eligibility

Based on the full trial record, we determine that Petitioner has shown that the challenged claims of the '585 patent recite an abstract idea, the claims also lack integration into a practical application, and the generic computer components recited in those claims do not transform the claims into patent-eligible applications of that idea. Petitioner, thus, has shown by a preponderance of the evidence that claims 1–19 of the '585 patent are unpatentable under 35 U.S.C. § 101.

F. Patent Owner's Constitutional Challenge

Patent Owner states that the panel "lacks authority to invalidate the '585 Patent because Administrative Patent Judges were not appointed by the

President." PO Resp. 50. The Supreme Court resolved this issue in *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021).

G. Motion to Exclude

In connection with its Motion to Exclude, Petitioner seeks to exclude the Declaration of Mr. Cool (Ex. 2001) and the Declaration of Mr. Smith (Ex. 2002). Mot. Exclude. With respect to the former, Petitioner contends "Mr. Cool's testimony should be excluded in its entirety because (1) he is not qualified to provide opinions on invalidity and (2) his testimony is unreliable under FRE 702." *Id.* at 5. For Mr. Smith, Petitioner contends that

> [a]s the sole assignee of the patent, Mr. Smith has financial stakes in maintaining a valid patent for executing his threats of asserting that '585 Patent against Petitioner in a patent infringement suit. His interest in maintaining the patent and financial stakes in such litigation taint Mr. Smith's opinions in Exhibit 2002 as implicitly bias. Consequently, Mr. Smith's declaration should be given very little to no weight.

Id. at 5–6.

The exhibits and testimony identified by Petitioner as a part of its Motion to Exclude have not been considered in a manner that is adverse to Petitioner. Accordingly, we determine that Petitioner's Motion to Exclude is moot, and we dismiss it as such.

III. CONCLUSION[11]

In summary,

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
1–19	101	Eligibility	1–19	

IV. ORDER

For the reasons given, it is:

ORDERED that Petitioner has shown, based on a preponderance of evidence, that claims 1–19 of U.S. Patent No. 10,467,585 B2 are unpatentable;

FURTHER ORDERED that Petitioner's Motion to Exclude (Paper 26) is dismissed as moot; and

FURTHER ORDERED because this is a final written decision, the parties to this proceeding seeking judicial review of our Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

[11] Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. *See* 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. *See* 37 C.F.R. §§ 42.8(a)(3), (b)(2).

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