

Pet. App. 1

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

IN RE: CHARLES T. FOTE,
Appellant

2018-2311

Appeal from the United States Patent and Trade-
mark Office, Patent Trial and Appeal Board in No.
14/455,526.

JUDGMENT

(Filed Nov. 12, 2019)

JULIE S. GOLDEMBERG, Morgan, Lewis & Bockius
LLP, Philadelphia, PA, argued for appellant. Also rep-
resented by JASON C. WHITE, Chicago, IL; WILLIAM R.
PETERSON, Houston, TX.

AMY J. NELSON, Office of the Solicitor, United
States Patent and Trademark Office, Alexandria, VA,
argued for appellee Andrei Iancu. Also represented by
THOMAS W. KRAUSE, JOSEPH MATAL, ROBERT MCBRIDE.

Pet. App. 2

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (REYNA, TARANTO, and STOLL, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

November 12, 2019

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

Pet. App. 3

UNITED STATES PATENT
AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL
AND APPEAL BOARD

Ex parte CHARLES T. FOTE

Appeal 2017-003210
Application 14/455,526¹
Technology Center 3600

Before HUBERT C. LORIN, NINA L. MEDLOCK, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

(Filed Jun. 29, 2018)

STATEMENT OF THE CASE

Charles T. Fote (Appellant) seeks our review under 35 U.S.C. § 134(a) of the Final Rejection of claims 3-5 and 8. We have jurisdiction under 35 U.S.C. § 6(b).

¹ The Appellant identifies Fotec Group LLC as the real party in interest. Br. 4.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Claim 8, reproduced below, is illustrative of the subject matter on appeal.

8. A telecommunication system comprising:
 - a) an electronic communication device connected to and configured for communication over a telecommunication network, the electronic device comprising:
 - a device communication facility permitting communication over the telecommunication network via a secure session; and
 - a processor configured for running a secure application for (i) authenticating or obtaining authentication information from a payer, (ii) communicating via secure sessions and accessing secure databases, (iii) receiving payee identifying and real account and financial institution information, (iv) receiving a selection by the payer of a funding source and at least one real account associated with the payer, and (v) receiving a selection by the payer of at least one real account and financial institution associated with the payee;

Pet. App. 5

b) a brokerage server, operated by a payment broker and connected to and configured for communication over the telecommunication network, the brokerage server comprising:

a server communication facility permitting communication over the telecommunication network via a secure session;

a computer memory comprising a secure database; and

a processor configured for (i) receiving authentication information via the telecommunication network using the server communication facility, (ii) authenticating and identifying the payer based on the authentication information, (iii) receiving, via the telecommunication network using the server communication facility, an instruction from the payer instructing that a payment be made electronically from the payer-selected funding source and at least one payer-selected real account thereof to a payer-selected real account and financial institution, other than the payment broker, associated with the payee, the selection of the real account and financial institution associated with the payee being controlled by the payer and not by the payee, (iv) computationally retrieving, from the secure database, information identifying the payer-selected funding source and the at least one payer-selected real account

Pet. App. 6

thereof and the payee and the payer-selected real account of the payee at a financial institution other than the payment broker, (v) requesting, via the telecommunication network using the server communication facility, the server of the payer-selected funding source to authorize the payment to the payee, (vi) if the payment is authorized by the server of the payer-selected funding source, instructing such server, via the telecommunication network using the server communication facility, to cause the payment to be made electronically to the payee on the funding source's behalf by a third party other than the payment broker such that the identities of the payer-selected funding source and the at least one payer-selected real account of the payer at the funding source are not divulged to the payee and such real account identifying information is not transmitted to, received or stored by the payee's depository bank or other financial institution, and (vii) instructing the server of the payer selected funding source, via the telecommunication network using the server communication facility, to reimburse or transfer the amount of the payment to the third party from the at least one payer-selected real account of the payer at the funding source;

and

Pet. App. 7

c) a funding source server, operated by a payer-selected funding source and connected to and configured for communication over the telecommunication network, the funding source server comprising:

a server communication facility permitting communication over the telecommunication network;

a computer memory comprising a secure database; and

a processor configured for (i) receiving, via the telecommunication network using the server communication facility, the request from the payment broker server for authorization of the payment, (ii) computationally retrieving, from a secure database, information identifying the payer and the at least one payer-selected real account of the payer at the funding source, (iii) authorizing or denying the requested payment, (iv) in response to instruction from the payment broker server following authorization, instructing, via the telecommunication network using the server communication facility, at least one third party other than the payment broker to make the payment electronically to the payee from a real account of the third party at a financial institution associated with the third party and in the third party's name and not in the name of the payment broker, the funding source or the payer, thereby preventing divul-gation, both to the payee's depository bank or financial institution and to the payee, of the

Pet. App. 8

identity of the funding source and the at least one payer-selected real account of the payer, and (v) reimbursing or transferring the amount of the payment to the third party from the at least one payer selected real account of the payer at the funding source.

THE REJECTION²

The following rejection is before us for review:

Claims 3-5 and 8 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

ISSUE

Did the Examiner err in rejecting claims 3-5 and 8 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter?

ANALYSIS

The rejection of claims 3-5 and 8 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

The Appellant argues these claims as a group. See Appeal Br. 7-17; *see also*, Reply Br. 2-6. We select claim 8 as the representative claim for this group, and the remaining claims 3-5 stand or fall with claim 8. 37 C.F.R. § 41.37(c)(1)(iv).

² The Examiner withdrew the rejection under 35 U.S.C. § 103 (Ans. 2).

Pet. App. 9

Alice Corp. Proprietary Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014), identifies a two-step framework for determining whether claimed subject matter is judicially excepted from patent-eligibility under 35 U.S.C. § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In that regard, the Examiner determined that the claims are directed to “the abstract idea of electronic fund transfer using a third party,” and that that is similar to the abstract idea identified in *Alice*. Final Act. 3. According to the Examiner, “[t]he invention simply uses a third party/intermediary rather than a traditional payment broker to facilitate electronic payment to a payee from a payer’s funding source.” Ans. 3.

The Appellant challenges the Examiner’s determination that the concepts to which claim 8 is directed are abstract ideas. According to the Appellant,

The recited device and servers intercommunicate over a telecommunication network in a specific fashion to preclude divulgence, both to the payee’s depository bank or financial institution and to the payee, of the identity of the payer’s funding source and the payer-selected real account(s) of the payer in the course of a payment transaction.

Appeal Br. 8. According to the Appellant, this feature of claim 8 cannot be considered abstract because “[i]f

this is ‘abstract,’ it is difficult to imagine what claim could escape that fatal designation . . .” *Id.*

Claim 8 recites a funding source server processor configured for, *inter alia*:

instructing, via the telecommunication network using the server communication facility, at least one third party other than the payment broker to make the payment electronically to the payee from a real account of the third party at a financial institution associated with the third party and in the third party’s name and not in the name of the payment broker, the funding source or the payer, thereby preventing divulgation, both to the payee’s depository bank or financial institution and to the payee, of the identity of the funding source and the at least one payer-selected real account of the payer . . .

Appeal Br. 20 (Claims Appendix). In other words, the invention prevents divulgation of payer information by instructing “at least one third party” to act as an intermediary between the payer and the payee in the course of making a payment electronically.

We see little difference between the claimed use of “at least one third party” to prevent divulgation of information and “the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.” *Alice*, 134 S. Ct. at 2356. The similarities are readily apparent. The Court in *Alice* described the claimed invention as follows:

Petitioner’s claims involve a method of exchanging financial obligations between two parties using a third-party intermediary to mitigate settlement risk. The intermediary creates and updates “shadow” records to reflect the value of each party’s actual accounts held at “exchange institutions,” thereby permitting only those transactions for which the parties have sufficient resources. At the end of each day, the intermediary issues irrevocable instructions to the exchange institutions to carry out the permitted transactions.

Id. Like the invention in *Alice*, claim 8 involves exchanging financial obligations between two parties (i.e., between actual accounts of the two parties) using a third-party intermediary. And like the invention in *Alice*, claim 8 involves computer systems for implementing electronic financial transactions, the transactions carried out by issuing instructions to a third-party intermediary (“instructing . . . at least one third party . . . to make the payment electronically to the payee from a real account of the third party”). We see no meaningful distinction between the concept of intermediated settlement at issue in *Alice* and the concept of intermediated payment at issue here.

The Appellant argues that the claims before us are similar to the claims in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016), where claims directed to the use of a self-referential table for a computer database were held patent-eligible. Appeal Br. 10. According to the Appellant, “the present claims likewise recite a specific implementation of a solution

to a problem in the art and practice of electronic commerce.” *Id.*

The argument is unpersuasive.

The court in *Enfish* put the question as being “whether the focus of the claims is on [a] 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.” *Enfish*, 822 F.3d at 1335-36. The court found that the “plain focus of the claims” there was on “an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Id.* at 1336.

The Specification belies the Appellant’s argument that the claimed subject matter does not merely use generic computers as a tool or that their functioning is improved by the claimed scheme. Claim 8 nominally defines a system comprising three different computer components (a, b, and c) and two secure databases (in b and c). The Specification discloses the claimed computers in functional terms as being “a general purpose computer . . . or any other device or arrangement of devices that is capable of implementing the steps of the processes of the invention.” (Spec. 16, ll. 1-9). The Specification does not disclose a new type of secure database or that the database stores records in any assertedly inventive way. Rather, the Specification merely discloses the use of “one or more databases having multiple records for payers and payees” (*Id.* at 5, ll. 27-28). Thus, the Specification supports the view that these

elements are simply conventional computer components as a conduit for the performance of a scheme for making electronic payments.

In view of the above, we see no error in the Examiner’s determination that claim 8 is directed to an abstract idea.

Step two of the *Alice* framework is “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 73 (2012)).

In that regard, the Examiner determined that “[t]he claims recite additional limitations of using an electronic device, broker server, and a funding source server in a network” and that these components “simply perform the generic computer functions of receiving, processing and transmitting information.” Final Act. 3. According to the Examiner, “[t]he claims at issue do not require any nonconventional computer, network, or database components, or even a ‘non-conventional and non-generic arrangement of known, conventional pieces,’ but merely call for performance of the claimed facilitation of EFT functions ‘on a set of generic computer components.’” Ans. 4 (quoting *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349-50 (Fed. Cir. 2016)).

The Appellant argues that the claims are similar to the claims held eligible in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). Appeal Br. 11-13. According to the Appellant, “[p]ayments made electronically over telecommunication networks, by contrast, present vulnerabilities unknown and inapplicable to such conventional [nonelectronic] arrangements” such as ‘man in the middle’ attacks,” wherein “malicious actors acquire information from both the payer and the payer’s funding source, and piece these together to masquerade as one of the end parties.” *Id.* at 12. The Appellant contends that:

This invention, like the “network-centric” invention in *DDR*, addresses these network-based security holes by (i) authenticating the payer and obtaining information using a secure application, communicating via secure sessions and using secure databases, (ii) allowing the payer to select the payee account and financial institution to which the electronic payment to the payee will be made, (iii) ensuring that the payment destination is a third party other than the payment broker (which could compromise information), and (iv) requiring that the electronic payment to the payee originate from a real account and financial institution associated with a third party other than the payment broker or the payer’s funding source and in the third party’s name. Thus, this is a network-based solution to a network-based problem, with specific operations that are only meaningful over a network; it is not a basic financial transaction

that happens to be carried out over a network as a generic alternative to traditional channels.

Id. at 12-13.

In *DDR Holdings*, the Federal Circuit determined that although the patent claims at issue involved conventional computers and the Internet, the claims nevertheless addressed the problem of retaining website visitors who, if adhering to the routine, conventional functioning of the Internet hyperlink protocol, would be transported instantly away from a host's website after "clicking" on an advertisement and activating a hyperlink. *DDR Holdings*, 773 F.3d at 1257. The court determined that those claims were directed to statutory subject matter because they claim a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *Id.*

No such technological advance is evident in the claimed invention. Unlike the situation in *DDR Holdings*, the claimed computer components operate precisely in the expected manner of storing data in association with other data, and sending and receiving data via a conventional network. (See Spec. 14, ll. 4-5 ("the Internet and/or any other land-based or wireless telecommunication network or system.")). *Cf. buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) ("That a computer receives and sends the information over a network--with no further specification--is not even arguably inventive"). Nothing in the claim, understood

Pet. App. 16

in light of the Specification, requires anything more than conventional computer implementation. “The [S]pecification fails to provide any technical details for the tangible components, but instead predominately describes the system and methods in purely functional terms.” *In re TLI Commc’ns. LLC Patent Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016). For example, with respect to the claimed step of “authenticating and identifying the payer based on the authentication information,” the Appellant’s Specification simply discloses:

Any suitable authentication method or technology may be used, including but not restricted to, authentication via password/PIN entry and/or biometrics, digital signature functionality, or other two factor or three factor authentication all local to the electronic device, as well as additional known authentication processes at the payment broker’s server to ensure that the payer, electronic device, software application and designated payee are properly authenticated so that the processing and completion of the requested payment transaction can continue.

Spec. 16, l. 25-17, l. 4. There is no detail as to how the authentication process is programmed or performed by the computer beyond the use of these “known authentication processes.” “[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *DDR Holdings*, 773 F.3d at 1256 (citation omitted).

Pet. App. 17

Moreover, authentication, per se, is an abstract idea. See *EasyWeb Innovations, LLC v. Twitter, Inc.*, 2016 WL 1253674 (E.D.N.Y. 2016), *aff'd*, No. 2016-2335 (Fed. Cir. 2017) (“receiving, authenticating, and publishing data” is an abstract idea.) Claims that include authentication steps have been found patent-ineligible. See e.g., *Intellectual Ventures I LLC v. J. Crew Group, Inc.*, 703 F. App’x 991 (Mem.) (Fed. Cir. 2017); *Front Row Technologies LLC v. MLB Advanced Media, L.P.*, 697 F. App’x 701 (Mem.) (Fed. Cir. 2017); *GoDaddy.com LLC v. RPost Communications Limited*, 685 F. App’x 992 (Mem.) (Fed. Cir. 2017); *Clarilogic, Inc. v. FormFree Holdings Corporation*, 681 F. App’x 950 (Fed. Cir. 2017); *Morsa v. Facebook, Inc.*, 622 F. App’x. 915 (Mem.) (Fed. Cir. 2015); and *Prism Technologies LLC v. T-Mobile USA, Inc.*, 696 F. App’x. 1014 (Fed. Cir. 2017).

Merely combining several abstract ideas does not render the combination any less abstract. Cf. *Shortridge v. Found. Constr. Payroll Serv., LLC*, No. 14-CV-04850-JCS, 2015 WL 1739256, *11 (N.D. Cal. Apr. 14, 2015), *aff'd*, No. 2015-1898, 2016 WL 3742816 (Fed. Cir. July 13, 2016).

We also cannot agree with the Appellant that the claims before us are similar to those in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). See Appeal Br. 14-17. The Appellant contends that the claims are similar to the invention in *Bascom* because “the claims recite three intercommunicating devices, their operational components, the specific manner in which they are configured

to interact and the particular data and instructions they are configured to receive and transmit.” *Id.* at 14.

This argument is unpersuasive.

In *Bascom*, the court determined that “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Bascom*, 827 F.3d at 1350. Specifically, *Bascom*’s content filter could be “installed remotely in a single location” and “this particular arrangement of elements is a technical improvement over the prior art ways of filtering.” *Id.*

That the claim requires three devices configured for communicating “particular data and instructions” via a network is not enough to transform the abstract idea into a patent-eligible invention. *Cf. In re Salwan*, 681 F. App’x 938, 941 (Fed. Cir. 2017) (“Given that the claims are directed to well-known business practices, the claimed elements of a generic “network,” “computer program,” “central server,” “device,” and “server for processing and transferring” are simply not enough to transform the abstract idea into a patent-eligible invention.”). In our view, the invention before us is more similar to the claimed invention in *Alice* than *Bascom*. Indeed, *Alice* Corporation made a similar argument as the Appellant makes here. *See Alice*, 134 S. Ct. at 2360:

As to its system claims, petitioner emphasizes that those claims recite “specific hardware” configured to perform “specific computerized functions.” Brief for Petitioner 53. But what petitioner characterizes as specific hardware—

a “data processing system” with a “communications controller” and “data storage unit,” for example, *see* App. 954, 958, 1257—is purely functional and generic. Nearly every computer will include a “communications controller” and “data storage unit” capable of performing the basic calculation, storage, and transmission functions required by the method claims. *See* 717 F.3d, at 1290 (Lourie, J., concurring). As a result, none of the hardware recited by the system claims “offers a meaningful limitation beyond generally linking ‘the use of the [method] to a particular technological environment,’ that is, implementation via computers.” *Id.*, at 1291 (quoting *Bilski*, 561 U.S., at 610-611, 130 S. Ct. 3218).

Taking the claim elements separately, the function performed by the computers at each step is purely conventional. Communicating/receiving data, authenticating information, storing/retrieving data via databases, and issuing instructions are basic computer functions. In short, each step does no more than require a generic computer to perform routine computer functions. Each element acts a conduit for the performance of its corresponding common function. *Cf. In re TLI Commc’ns.*, 823 F.3d at 612.

Put differently, the telephone unit itself is merely a conduit for the abstract idea of classifying an image and storing the image based on its classification. Indeed, the specification notes that it “is known” that “cellular telephones may be utilized for image transmission,” *id.* at col. 1 ll. 31-34, and existing telephone

systems could transmit pictures, audio, and motion pictures and also had “graphical annotation capability,” *id.* at col. 1 ll. 52-59.

Cf. also Credit Acceptance Corp. v. Westlake Services, LLC, 859 F.3d 1044, 1057 (Fed. Cir. 2017):

Significantly, the claims do not provide details as to any non-conventional software for enhancing the financing process. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”); *Elec. Power Grp.*, 830 F.3d at 1354 [*Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016)]; (explaining that claims are directed to an abstract idea where they do not recite “any particular assertedly inventive technology for performing [conventional] functions”).

Considered as an ordered combination, the computer components of Appellant’s system add nothing that is not already present when the components are considered separately. The claim does not, for example, purport to improve the functioning of any computer. Nor does it effect an improvement in any other technology or technical field. Instead, the claim at issue amounts to nothing significantly more than an instruction to communicate information and issue instructions using a generic computer. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Pet. App. 21

The Appellant argues that the claims are novel and nonobvious over the prior art cited by the Examiner, and that this demonstrates that the claims are not merely conventional. Appeal Br. 15. *See also*, Reply Br. 4 (“the claims recite an arrangement sufficiently unconventional to be patentable over prior art cited by the Examiner and concerned with similar problems in the same domain.”)

However, a finding of novelty or nonobviousness does not necessarily lead to the conclusion that subject matter is patent-eligible. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2117 (2013). *See especially Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016):

Indeed, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of *no relevance* in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188-89, 101 S. Ct. 1048, 67 L.Ed.2d 155 (1981) (emphasis added); *see also Mayo*, 132 S. Ct. at 1303-04 (rejecting “the Government’s invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101”). Here, the jury’s general finding that Symantec did not prove by clear and convincing evidence that three particular prior art references do not disclose all the limitations of or render obvious the asserted claims does not

resolve the question of whether the claims embody an inventive concept at the second step of *Mayo/Alice*.

The Appellant argues that the claims do not preempt others from using an abstract idea as evidenced by the alternative approaches to preventing divulgence of sensitive payer information disclosed by the prior art cited by the Examiner. Appeal Br. 15.

It is true that the Supreme Court has characterized pre-emption as a driving concern for patent eligibility. See *Alice*, 134 S. Ct. at 2354. But characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 134 S. Ct. at 2354). However, “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.* at 1379. Cf. *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362-63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). “What matters is whether a claim threatens to subsume the full scope of a fundamental concept, and when those concerns arise, we must look for meaningful limitations that prevent

the claim as a whole from covering the concept's every practical application.” *CLS Bank Intern. v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1281 (Fed. Cir. 2013) (Lourie, J., concurring). Here, we find the claimed subject matter covers patent-ineligible subject matter. Accordingly, the pre-emption concern is necessarily addressed. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, [] preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics*, 788 F.3d at 1379.

The Appellant’s arguments challenging the Examiner’s determination that claim 8 does not add anything significantly more to transform the combination of abstract ideas to which it is directed into an inventive concept are unpersuasive.

We have considered all of the Appellant’s remaining arguments and have found them unpersuasive. Accordingly, because representative claim 8 and claims 3-5, which stand or fall with claim 8, are directed to an abstract idea and do not present an “inventive concept,” we sustain the Examiner’s determination that they are directed to ineligible subject matter under 35 U.S.C. § 101. *Cf. LendingTree, LLC v. Zillow, Inc.*, 656 F. App’x 991, 997 (Fed. Cir. 2016) (“We have considered all of LendingTree’s remaining arguments and have found them unpersuasive. Accordingly, because the asserted claims of the patents in suit are directed to an abstract idea and do not present an ‘inventive concept,’ we hold that they are directed to ineligible subject matter under 35 U.S.C. § 101.”).

Pet. App. 24

The rejection is sustained.

DECISION

The decision of the Examiner to reject claims 3-5 and 8 is affirmed.

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

AFFIRMED
