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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHN RUCKART

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Appeal 2015-000497<sup>1</sup>  
Application 11/271,582<sup>2</sup>  
Technology Center 3600

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Before NINA L. MEDLOCK, BRADLEY B. BAYAT, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 2–4, 7, 10–14, and 21–25. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE DECISION

We AFFIRM.

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<sup>1</sup> Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed June 10, 2014), Reply Brief (“Reply Br.,” filed Oct. 7, 2014), the Examiner’s Answer (“Ans.,” mailed July 30, 2014) and Final Office Action (“Final Act.,” mailed Nov. 7, 2013).

<sup>2</sup> Appellant identifies “AT&T Intellectual Property I, L.P.” as the real party in interest. Appeal Br. 2.

### CLAIMED INVENTION

Appellant's claimed invention "relates in general to methods and systems for communicating with customers" Spec. ¶ 2. Claims 21 and 22 are the pending independent claims. Claim 21, reproduced below, is illustrative of the subject matter on appeal:

21. A method of providing targeted offers, the method comprising:
- receiving a proximity signal indicating a customer being in proximity to a first store, wherein the proximity signal is indicative of an identity of the customer;
  - receiving a selection indication indicative of the customer selecting a selected item at a first store, the selection indication being received contemporaneously with the customer being in proximity to the first store;
  - identifying an additional item based upon:
    - the selected item; and
    - an information table including items of possible interest to the customer;
  - conveying an offer for the additional item to the customer at a point of sale, wherein the additional item is offered by a first merchant associated with the first store;
  - determining at the point of sale, by a point of sale terminal, whether the customer accepted the offer; and
  - responsive to determining that the customer accepted the offer, updating a first customer table and a second customer table included in a database to reflect an acceptance by the customer of the offer;
    - wherein updating the first customer table includes updating classification fields, associated with the customer and used to identify additional items to convey to a customer, based on the offer;
    - wherein updating the second customer table includes updating purchase information about the offer.

Appeal Br. 13–14, Claims App.

## REJECTIONS

- I. Claims 2–4, 7, 10–14, and 21–25 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.<sup>3</sup>
- II. Claims 2, 7, 10, 11, 21, and 22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sloane (US 5,918,211, iss. June 29, 1999) and Deaton (US 5,687,322, iss. Nov. 11, 1997).
- III. Claims 3, 4, 23, and 24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sloane, Deaton, and Gupta (US 6,820,062 B1, iss. Nov. 16, 2004).
- IV. Claims 12–14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sloane, Deaton, and Official Notice (as evidenced by Moore, US 7,200,566 B1, iss. Apr. 3, 2007).

## ANALYSIS

### *Rejection I*

We are not persuaded by Appellant’s contentions against the Examiner’s rejection under 35 U.S.C. § 101. Reply Br. 5–8.

Taking claim 21 as representative of the claims on appeal, the Examiner finds that claim 21 is directed to “the abstract idea of providing information to customers (upselling) at a point of sale.” Ans. 2. Appellant’s Specification describes the claimed invention as “relate[d] to communicating with customers in proximity to a point of sale.” Spec. ¶ 2. Claim 21 is directed to “[a] method of providing targeted offers” comprising six steps: (a) receiving a proximity signal, (b) receiving a selection indication of an item, (c) identifying an additional item based on the selected item and other

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<sup>3</sup> New grounds of rejection approved by the Director. Ans. 2.

information, (d) conveying an offer for the additional item, (e) determining whether the customer accepted the offer, and (f) updating customer data to reflect the acceptance by the customer. Consistent with the Examiner's finding, we find the subject matter of claim 1 is reasonably broadly construed as drawn to a process for providing targeted advertisements or offers.

The practice of targeted advertising has long been employed using a variety of methods in field of advertising, is not tied to any particular technology, and can be implemented by conventional technology. The claims are directed not to an improvement in POS terminals but simply to the use of POS terminals as tools in the aid of a process focused on an abstract idea. The idea underlying the invention in this case is akin to the similar ideas underlying the claims in recent court decisions such *TLI Communications* (abstract idea of “classifying and storing digital images in an organized manner.”),<sup>4</sup> *Affinity Labs* (abstract idea of “**providing out-of-region access to regional broadcast content.**”),<sup>5</sup> *Bascom* (abstract idea of “filtering content on the internet.”),<sup>6</sup> and *Morsa* (abstract idea of “targeting advertisements to certain consumers, and using a bidding system to determine when and how advertisements will be displayed.”).<sup>7</sup> As such, we find that claim 21 is directed to the concept of targeted advertising, a

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<sup>4</sup> *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607 (Fed. Cir. 2016).

<sup>5</sup> *Affinity Labs of TX LLC v. DirecTV, LLC*, 120 USPQ2d 1201 (Fed. Cir. 2016).

<sup>6</sup> *BASCOM Global Internet Services v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

<sup>7</sup> *Morsa v. Facebook, Inc.*, 622 F.App'x 915 (Fed. Cir. 2015).

patent-ineligible abstract idea which has been around as long as advertising itself.

Turning to the second step in *Alice*, we consider whether there is an inventive concept, defined by an element or combination of elements in claim 21, which is significantly more than the abstract idea of targeted advertising. We conclude here that there is no such inventive concept.

In this instance, claim 21 does not transform the abstract idea, because it merely puts into application routine steps comprising conventional activity well-known in the art. The functions performed by each steps of claim 21—receiving indications (e.g., RFID signal), identifying items based upon data (matching), conveying an offer (displaying), determining acceptance of the offer (transaction processing), and updating customer data (storing data) to reflect acceptance of the offer are well understood, routine, and conventional activities. The claim merely recites the use of generic features of POS terminals, such as transaction processing and storage, as well as other routine functions, such as transmitting and receiving signals to implement the underlying idea. The *updating step* and *wherein* clauses of claim 21 represent routine and insignificant post-solution activity. The claim when viewed as whole is nothing more than performing conventional processing functions that courts have routinely found insufficient to transform an abstract idea into a patent-eligible invention.

Consequently, we sustain the rejection of independent claim 21, and claim 22, which recites substantially similar subject matter and is argued together. We also sustain the rejection of the claims dependent thereon, which are not separately argued.

*Rejections II–IV*

We are persuaded by Appellant’s argument that the Examiner erred in rejecting claims 21 and 22 under 35 U.S.C. § 103(a) at least because the cited passages in Deaton do not disclose or suggest “updating the first customer table includes updating classification fields, associated with the customer and used to identify additional items to convey to a customer, based on the offer,” as recited in claim 21. Final Act. 5 (citing Deaton 70:63–67, 71:1–2, 71:32–39, 71:56–60).

Deaton is directed to a method and system for selective incentive POS marketing in response to customer shopping histories. Deaton, Title. Column 70, line 63 to column 71, line 2 of Deaton describes recording shopping events and dollars spent in order to build a shopping history for each customer record, and updating the customer’s record with the scanned check information. This passage at most describes storing and updating of data. Column 71, lines 32 to 39 of Deaton describes analyzing preselected criteria such as shopping volume and demographics against the customer’s record to determine a corresponding coupon value. Finally, column 71, lines 56 to 60 of Deaton describes determining which coupons to disperse based on the customer’s previous 30 day spending total. Therefore, we fail to see and the Examiner does not adequately explain how or why the relied upon passages in Deaton disclose “updating the first customer table includes updating classification fields, associated with the customer and used to identify additional items to convey to a customer, based on the offer,” as required by independent claims 21 and 22.

Therefore, we do not sustain the Examiner’s rejection of independent claims 21 and 22 under 35 U.S.C. § 103(a). For the same reasons, we also

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do not sustain the Examiner's rejection of dependent claims 2–4, 7, 10–14, and 23–25. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

#### DECISION

The Examiner's decision to reject claims 2–4, 7, 10–14, and 21–25 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). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED