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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* LYNN H. BLAGG and CAROL A. LINDSAY

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Appeal 2016–000267  
Application 11/956,256  
Technology Center 3600

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Before HUBERT C. LORIN, ANTON W. FETTING, and  
BIBHU R. MOHANTY, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE<sup>1</sup>

Lynn H. Blagg and Carol A. Lindsay (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claims 14–21, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

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<sup>1</sup> Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed May 15, 2015) and Reply Brief (“Reply Br.,” filed October 2, 2015), and the Examiner’s Answer (“Ans.,” mailed August 7, 2015), and Final Action (“Final Act.,” mailed December 18, 2014).

The Appellants invented a way of performing reward redemptions.  
Spec. ¶ 3.

An understanding of the invention can be derived from a reading of exemplary claim 14, which is reproduced below (bracketed matter and some paragraphing added).

14. A method for accruing frequent flyer rewards, the method comprising:

[1] providing an account

stored in a database of a computer system having a processor,

wherein the account includes a frequent flyer reward

that accrues based at least in part on activity of a first party,

and

wherein the account is controlled by an airline;

[2] receiving a request to associate

a second party

with

the account;

[3] associating with the processor

the second party with the account,

wherein the frequent flyer reward accrues

based at least in part on activity of the second party;

[4] receiving a request to redeem the reward;

[5] determining with the processor

that the account has not reached an activity level to qualify for the frequent flier reward;

and

[6] thereafter monitoring over time

the activity of the first party and the second party  
to evaluate whether the account qualifies for the earlier  
requested redemption of the frequent flyer reward;

and

[7] thereafter automatically providing information

usable to fulfill the earlier request to redeem the reward,  
once monitoring indicates that the account qualifies for  
the frequent flyer reward based on the activity of the first  
party and the second party,

wherein the step of providing information further  
comprises,

once the account qualifies for the frequent flyer  
award,

directing the first party as to how the frequent flyer  
reward may be redeemed by the first party.

Claims 14–21 stand rejected under 35 U.S.C. § 101 as directed to non–  
statutory subject matter.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims  
recite more than abstract conceptual advice regarding product and service  
promotion.

## ANALYSIS

The Supreme Court

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. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us? To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a search for an “inventive concept”—*i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

*Alice Corp., Pty. Ltd. v CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014)  
(alteration in original) (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs. Inc.*, 132 S. Ct. 1289 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner finds the claims to be directed to frequent flyer reward programs which are fundamental economic practices and human organizational activities. Final Act. 2.

While the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case’s claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 14 recites that it is a method for accruing frequent flyer rewards. The steps in claim 14 result in providing information usable to fulfill a request to redeem a reward. The Specification at paragraph 3 recites that the invention relates to performing reward redemptions. Thus, all this evidence shows that claim 14 is directed to airline flyer awards, *i.e.* product and service promotion. This is consistent with the Examiner’s findings.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of product and service promotion is a fundamental business practice long prevalent in our system of commerce. The use of product and service promotion is also a building block of marketing. Thus, product and service promotion, like hedging, is an “abstract idea” beyond the scope of § 101. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2356.

As in *Alice*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2357. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of product and service promotion at issue here. *Id.* Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See id.*

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. Inc., v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 14, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data collection, analysis, and provision and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837

F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 14 is directed to the abstract idea of receiving, analyzing, and providing data.

The remaining claims merely describe promotional parameters. We conclude that the claims at issue are directed to a patent-ineligible concept.

The introduction of a computer into the claims does not alter the analysis at Mayo step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on ... a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2358 (alterations in original) (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to store records, transfer data, record associations among data, monitor transactions, and produce data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants' method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellants' method claims simply recite the concept of product and service promotion as performed by a generic computer. To be sure, the claims recite doing so by advising one to aggregate plural frequent flier award accounts and let one know when an account qualifies for an award. But this is no more than abstract conceptual advice on the parameters for such promotion and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The 46 pages of disclosure spell out different marketing strategies using this concept and the particular steps such conventional processing would entail based on the concept of aggregating such accounts under different marketing strategies. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction



to apply the abstract idea of product and service promotion using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.* 134 S. Ct. at 2360.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

*Id.* (alterations in original).

We are not persuaded by Appellants’ argument claim 17 passes the first *Alice* test because the data content that is passed, compared, and produced is specific rather than general. App. Br. 7. The nature of the data being passed in order to promote the airline services is not part of what the claim is directed to but instead is part of the manner of providing promotion. In *Alice* step two, the nature of the content does not provide any particular technical advantage but instead is part of the abstract conceptual advice recited.

While limiting the index to XML tags certainly narrows the scope of the claims, in this instance, it is simply akin to limiting an abstract idea to one field of use or adding token post solution components that do not convert the otherwise ineligible concept into an inventive concept.

*Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1328 (Fed. Cir. 2017).

We are not persuaded by Appellants' argument that "the database and computer system are specially programmed and designed devices having features that are beyond 'what is well understood, routine and conventional in the field,' which qualifies as 'significantly more' than an abstract idea." App. Br. 7–8. The only such features are using a computer to store records, transfer data, record associations among data, monitor transactions, and produce data.

Appellants further argue that the asserted claims are akin to the claims found patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014). App. Br. 8. In *DDR Holdings*, the Court evaluated the eligibility of claims "address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after 'clicking' on an advertisement and activating a hyperlink." *Id.* at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no "pre-Internet analog." *Id.* at 1258. The Court cautioned, however, "that not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* For example, in *DDR Holdings* the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. *See id.* at 1258–59 (citing *Ultramercial Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014)). As noted there, the *Ultramercial* claims were "directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before." *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at

715–16). Nevertheless, those claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.* Similarly, Appellants’ asserted claims recite using a computer to store records, transfer data, record associations among data, monitor transactions, and produce data. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are not persuaded by Appellants’ argument that the claims at issue do not attempt to preempt every application of the idea. App. Br. 8. That the claims do not preempt all forms of the abstraction or may be limited to the abstract idea in the e-commerce setting do not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–1361–63 (Fed. Cir. 2015). Beyond the abstract idea of advertising distribution, the claims merely recite well-understood, routine conventional activities, either by requiring conventional computer activities or routine data-gathering steps. Considered individually or taken together as an ordered combination, the claim elements fail to transform the claimed abstract idea into a patent eligible application. *Id.* at 1363.

We are not persuaded by Appellants’ argument that the claim is novel and non-obvious. Reply Br. 2. This is a rejection under 35 U.S.C. § 101. “A claim for a *new* abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016)

CONCLUSIONS OF LAW

The rejection of claims 14–21 under 35 U.S.C. § 101 as directed to non–  
statutory subject matter is proper.

DECISION

The rejection of claims 14–21 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) (2011).

AFFIRMED