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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KENT ALLEN SAVAGE, WESLEY SCHIESZ, and  
MATTHEW HOVIS

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Appeal 2016-001636  
Application 11/771,215<sup>1</sup>  
Technology Center 3600

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*Before* MURRIEL E. CRAWFORD, MEREDITH C. PETRAVICK, and  
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The Appellants identify Famecast, Inc. as the real party in interest. Br. 1.

## STATEMENT OF THE CASE

Kent Allen Savage et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 35–52<sup>2</sup>. We have jurisdiction under 35 U.S.C. § 6(b).

U.S. Patent Application No. 11/771,215 was the subject of previous Appeal No. 2011-009987. The claims at issue in Appeal No. 2011-009987 have been canceled.

## SUMMARY OF DECISION

We AFFIRM.<sup>3</sup>

## THE INVENTION

Claims 35 and 43 are independent. Claim 35 recites an apparatus for managing a talent contest, and claim 43 recites a similar method. Claims 36–42 depend directly or indirectly from claim 35. Claims 44–52 depend directly or indirectly from claim 43.

Claim 35, reproduced below, is illustrative of the subject matter on appeal.

35. A talent contest management platform comprising:

an artist manager stored in non-transitory memory and operable to execute on a processor to accept video presentations

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<sup>2</sup> Claims 1–31 have been cancelled.

<sup>3</sup> Our decision references the Appellants' Appeal Brief ("Br.," filed Jul. 13, 2015) and the Examiner's Answer ("Ans.," mailed Sept. 11, 2015) and Final Office Action ("Final Act.," mailed Mar. 13, 2015). Appellants did not file a Reply Brief.

from plural artists through a network, each video presentation classified by genre;

a fan manager stored in non-transitory memory and operable to execute on a processor to register plural fans and to selectively present the video presentations through the network to the fans for viewing through plural stages, each stage associated with a genre, the fan manager selectively presenting the video presentations in an order based at least on the number of fans associated with the artist of each video presentation;

a voting system stored in non-transitory memory and operable to execute on a processor, the voting system accessible to the fans through the network and operable to accept votes for artist presentations, the votes tallied at a predetermined time to select a talent contest winner for each genre, the voting system requiring a registration of each voter including at least an e-mail address of each voter, the email address confirmed by sending an e-mail having a visual code to the e-mail address and requiring a response from the e-mail address to authenticate the voter with the response including the visual code manually input into the response by each voter, the voting system operable to analyze registrations by plural users to detect multiple votes placed by a common user through the network at least in part by scanning all votes cast by all voters for fraud patterns associated with a predetermined video including at least by comparing viewing of the predetermined video and voting for the predetermined video and all the videos.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Call	US 6,154,738	Nov. 28, 2000
Morgan	US 2007/0043681 A1	Feb. 22, 2007
Poulin	US 7,427,025 B2	Sep. 23, 2008
Vander Mey	US 7,519,562 B1	Apr. 14, 2009

The following rejections are before us for review:

1. Claims 35–52 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention.
2. Claims 42–52 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
3. Claims 35, 36, and 43–47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Vander Mey, Call, and Morgan.
4. Claims 37–42 and 48–52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Vander Mey, Call, Morgan, and Poulin.
5. Claims 35–52 are rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter.

#### ANALYSIS<sup>4</sup>

The Board will not, as a general matter, unilaterally review those uncontested aspects of a rejection. *See, e.g., Ex Parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (citations omitted). *Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments appellant failed to make for a given ground of rejection as waived); *In re Watts*, 354 F.3d 1362, 1368 (Fed. Cir. 2004) (declining to consider the appellant’s new argument regarding the scope of a prior art patent when that argument was not raised before the Board); *In re Schreiber*, 128 F.3d 1473, 1479 (Fed. Cir. 1997) (declining to consider whether prior art cited in an obviousness rejection was non-analogous art when that argument was not raised before the Board). Thus, the Board will generally not reach the merits of any issues not contested by an appellant. *Cf. In re Baxter Travenol Labs*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant . . .”).

Here, Appellants do not challenge a number of rejections made by the Examiner. *See* Ans. 11. We summarily affirm those rejections below. Further, many of Appellants challenges are cursory and do not respond to the Examiner’s specific findings or rationale, as explained below. We review the challenged rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon.

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<sup>4</sup> The Leahy–Smith America Invents Act, Pub. L. No. 112–29, took effect on March 18, 2013. Because the instant application was filed before that date, any citations to 35 U.S.C. §§ 112 and 103 are to their pre-AIA version.

*Ex parte Frye*, 94 USPQ2d at 1075. We will not review the rejections in greater detail than that argued by Appellants.

*The Rejection of Claims 35–52 as Indefinite*

“[W]e apply the approach for assessing indefiniteness approved by the Federal Circuit in *Packard*, i.e., ‘[a] claim is indefinite when it contains words or phrases whose meaning is unclear.’” *Ex parte McAward*, No. 2015-006416, 2017 WL 3669566, at \*5 (PTAB Aug. 25, 2017) (precedential) (quoting *In re Packard*, 751 F.3d 1307, 1310, 1314 (Fed. Cir. 2014)). “Put differently, ‘claims are required to be cast in clear-as opposed to ambiguous, vague, indefinite-terms.’” *Id.* (quoting *Packard*, 751 F.3d at 1313). “At the same time, this requirement is not a demand for unreasonable precision.” *Packard*, 751 F.3d at 1313.

*Claims 35–42*

Claim 35 recites:

the voting system operable to analyze registrations by plural users to detect multiple votes placed by a common user through the network at least in part by scanning all votes cast by all voters for fraud patterns associated with a predetermined video including at least by comparing viewing of the predetermined video and voting for the predetermined video and all the videos.

The Examiner rejected claim 35 as indefinite because it is unclear how the voting system determines multiple votes by a common user by scanning all votes cast by all voters for fraud patterns associated with the predetermined video, and by comparing viewing of the predetermined video and voting for the predetermined video and all videos. *See* Final Act. 7–9.

Appellants respond that “those of skill in the art of network security are familiar with statistical techniques that analyze network traffic to determine the origins of communications.” Br. 5.

Appellants’ argument is unpersuasive because it does not sufficiently address the Examiner’s rejection. *See* Ans. 4. Appellants’ response is conclusory and provides no explanation to support Appellants’ assertion of what one of ordinary skill in the art would know.

We agree with the Examiner that the language of claim 35 is unclear. *See* Ans. 7–9. Further, the Specification is unhelpful in clarifying the limitation. The Specification discloses the voting system having Safe Vote Module 228 and separate Voting Results Monitor 230. *See* Spec. 13:6–15:8, Fig. 8. Safe Vote Module 228 is described as “tracking votes by user account, IP address and user agent so that a predetermined number of votes are allowed for an artist from each account, such as one vote per artist per account.” *Id.* at 13:17–19, Fig. 9. In other words, Safe Vote Module 228 detects multiple votes placed by a common user. The Specification does not describe Safe Vote Module 228 scanning all votes cast by all voters for fraud patterns associated with a predetermined video including at least by comparing viewing of the predetermined video and voting for the predetermined video and all the videos. Voting Results Monitor 230 “tracks all votes placed and scans for fraud patterns, such as by comparing views of an artist video submission against votes for the artist based on the video submission.” Spec. 13:23–25, Fig. 9. In other words, Voting Results Monitor 230 detects fraud patterns by scanning all votes. The Specification does not describe Voting Results Monitor 230 detecting multiple votes placed by a common user.

Accordingly, the rejection of 35 as being indefinite is affirmed. We also affirm the rejection of claims 36–42, which depend from claim 35, as being indefinite for this reason.

*Dependent Claim 36*

Claim 36 recites “wherein the voting system determines voting fraud based at least in part upon a comparison between the number of views of the predetermined video, the number of votes for the predetermined video, and the number of views and votes for all videos.”

The Examiner also rejected claim 36 as indefinite because it’s unclear “how the determination of multiple votes from a common user is being made by comparing the views of the video to the votes for the video, and the number of views and votes for all videos.” Final Act. 6.

Although the Appellants acknowledge that claim 36 was rejected as indefinite (Br. 3), Appellants make no arguments in response to the rejection (*see generally* Br.). This rejection of claim 36, therefore, is summarily affirmed for this additional reason. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*Claims 43–52*

Claim 43 recites “accepting talent contest video submissions from artists and communicated through a network for a predetermined submission deadline” and “presenting the video submissions to fans by communicating the video submissions through the network for presentation at a display device for a predetermined rating deadline.”

The Examiner rejected claim 43 as indefinite because “[i]t is not known what is meant to accept submission for a deadline” as opposed to

until the submission deadline. Final Act. 9. The Examiner applied the same reasoning to the “for predetermine rating deadline.” *Id.*

Appellants respond:

The Examiner finds ‘submission deadline’ and ‘rating deadline’ indefinite. Again the Examiner offers no evidence of indefiniteness. Applicants respectfully submit that the concept of a deadline is equally clear whether something is submitted for the deadline or until the deadline.

Br. 6.

Appellants’ argument is unpersuasive as it amounts to nothing more than a general allegation that claim 43 is not indefinite. The plain language of claim 43 recites “for” and not “until.”

Accordingly, the rejection of claim 43 as being indefinite is affirmed. We also affirm the rejection of claims 44–52, which depend from claim 43, as being indefinite for this reason.

#### *Claim 45*

The Examiner also rejected claim 45 as indefinite because it requires “presenting the plural video submissions to the fan in the random order.” Final Act. 11. Claim 45 depends from claim 44, which requires the presenting of video submissions is done in order of the number of fans associated with each artist. The Examiner argues that the presenting of the video submission cannot be done both randomly and in the order required by claim 44. *Id.*

Although the Appellants acknowledge that claim 45 was rejected as indefinite (Br. 3), Appellants make no arguments in response to the rejection

(*see generally* Br.). The rejection of claim 45, therefore, is summarily affirmed for this additional reason. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*Claim 46*

Claim 46 depends directly from claim 45 and indirectly from claim 44. Claim 46 recites “presenting the video submissions in order of the number of fan views.” Similarly as for claim 45, discussed above, the Examiner argues that the presenting of the video submission cannot be done in order of the number of fan views and randomly as required by claim 45 or in the order required by claim 44. Final Act. 10.

Although the Appellants acknowledge that claim 46 was rejected as indefinite (Br. 3), Appellants make no arguments in response to the rejection (*see generally* Br.). The rejection of claim 46, therefore, is summarily affirmed. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*The Rejection of Claims 42–52 as Failing to Comply with the Written Description Requirement*

*Claim 42*

Claim 42 recites “an e-commerce server operable to present advertising with videos, the advertising determined [at] least in part based upon a genre of the video presented with the advertising.” The Examiner rejected claim 42 as failing to comply with the written description requirement because the Specification as originally filed “does not provide any guidance or disclosure regarding how the e-commerce server works, how it presents advertising with the videos, and how the presented advertising is based on the genre of the video.” Final Act. 11–12.

Although the Appellants acknowledge that claim 42 was rejected as failing to comply with the written description requirement (Br. 3), Appellants make no arguments in response to the rejection (*see generally* Br.). The rejection of claim 42, therefore, is summarily affirmed. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*Claims 43–52*

Claim 43 recites “the stages created in non-transitory memory with instructions running on a processor.” The Examiner rejected claim 43 as failing to comply with the written description requirement because the Specification does not provide support for the stages being created with instructions running on a processor. Final Act. 12; *see* Ans. 10. The Examiner states: “While the specification discloses that the talent contest has stages, nothing is disclosed regarding how the stages are being created by using instructions running on a processor.” *Id.*; Ans. 10.

Appellants respond: “On page 6 at line 14, Figure 1 is described as a system architecture of a talent contest management platform 10 built with software tools including C++ modules. Plural stages 74 are depicted as one of the modules of Figure 1. Applicants respectfully submit that one of skill in the art would understand that software runs on a processor.” Br. 6–7.

The Statute requires that the “specification shall contain a written description of the invention . . . .” 35 U.S.C. § 112, first paragraph. To satisfy the written description requirement, the disclosure must reasonably convey to skilled artisans that the patentee possessed the claimed invention as of the filing date. *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (*en banc*). The requirement under § 112 does not

demand that the specification recite the claimed invention verbatim. *Id.* at 1352 (citations omitted).

Appellants' argument is persuasive. The Specification states: "A talent contest management platform 10 is built with software tools, such as an object oriented architecture having C++ modules . . . ." Spec. 6:15–17. Figure 1 depicts talent contest management platform 10 having a "Stages 74" module. Given this, we determine that the Specification and drawings provide sufficient written description support for this limitation of claim 43.

Accordingly, the rejection of claim 43, and claims 44–52, dependent thereon, under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement is reversed.

*The Rejection of Claims 35, 36, and 43–47 as Unpatentable Over Vander  
Mey, Call, and Morgan*

*Claims 35 and 36*

Above we determine that claim 35 was indefinite because the limitation related to detecting a fraud pattern was unclear. Appellants argues that Vander Mey, Call, and Morgan fail to teach this limitation. Br. 6. The Examiner asserts that the limitation would have been obvious given Vander Mey, Call, and Morgan. Final Act. 13–20. We, however, cannot determine if the prior art teaches the limitation because of the lack of clarity of the limitation. We are constrained to reverse, *pro forma*, the rejection of claim 35 and claim 36, depending therefrom, as unpatentable over Vander Mey, Call, and Morgan. *See In re Steele*, 305 F.2d 859, 862–63 (CCPA 1962) (A prior art rejection cannot be sustained if the hypothetical person of ordinary

skill in the art would have to make speculative assumptions concerning the meaning of claim language.).

*Claims 43–47*

The Examiner rejected 43 as unpatentable under 35 U.S.C. § 103 over Vander Mey, Call, and Morgan. Final Act. 13–20.

Other than a paragraph quoting a limitation of claim 43, the entirety of Appellants’ argument regarding the rejection of claim 43 is reproduced below:

Vander [ ]Mey, Call and Morgan cannot make obvious [c]laim 43 because Vander [ ]Mey, Call and Morgan fail to teach, suggest or disclose all elements recited by [c]laim 43. For example, Vander [ ]Mey, Call and Morgan fail to teach, suggest or disclose “analyzing all votes placed for all video submissions to detect predetermined patterns of fraud with instructions executing on a processor, the analyzing including at least comparing the number of views of a predetermined video and the number of votes for the video” as recited by [c]laim 43. Claim 43 includes a process for obtaining submissions on which votes are counted and requires that votes placed for “all” video submissions are analyzed to detect patterns of fraud. The art cited by the Examiner fails to address this more narrow scope set forth in [c]laim 43. Accordingly, Applicants respectfully request that the Board reverse the rejection of [c]laim 43.

Br. 7.

Appellants’ argument is unpersuasive because it does not sufficiently address the Examiner’s rejection. To meet the limitation at issue, the Examiner provides a lengthy analysis as to why the limitation at issue would have been obvious based on the teachings of the prior art. *See* Final Act. 13–20. For example, the Examiner cites to multiple portions of Vander

Mey to teach determining reliability of user ratings for content based upon a pattern of behavior *See e.g., id.* at 13 (citing Vander Mey 3:22–43).

Section 103(a) forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). One cannot establish nonobviousness by attacking the references individually when a challenge is predicated upon a combination of prior art disclosures. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Appellants’ argument does not sufficiently address why the limitation would not have been obvious to one of ordinary skill in the art in view of the prior art. Instead, Appellants attack the references individually, arguing that none of the references teaches the limitation at issue.

Accordingly, the rejection of claim 43 as being unpatentable over Vander Mey, Call, and Morgan is affirmed. We also affirm the rejection of claims 44–47 as being unpatentable over Vander Mey, Call, and Morgan because Appellants having made no separate arguments directed to these claims, thereby allowing claims 44–47 to stand or fall with claim 43. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*The Rejection of Claims 37–42 and 48–52 as Unpatentable over Vander  
Mey, Call, Morgan, and Poulin*

*Claims 37–42*

Claims 37–42 depend directly or indirectly from claims 35 and 36. For the same reasons as discussed above with respect to claims 35 and 36,

we reverse, *pro forma*, the rejection of claims 37–42 as unpatentable over Vander Mey, Call, Morgan, and Poulin.

*Claims 48–52*

Claims 48–52 depend directly or indirectly from claim 43. Appellants having made no separate arguments directed to these claims, thereby allowing claims 48–52 to stand or fall with claim 43. *See* 37 C.F.R. § 41.37(c)(1)(iv). Accordingly, the rejection of claims 48–52 as being unpatentable over Vander Mey, Call, Morgan, and Poulin is affirmed.

*The Rejection of Claims 35–52 under 35 U.S.C. § 101*

The Examiner rejected claims 35–52 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 3–7; Ans. 2–4.

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the

claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Appellants rely upon the same argument regarding the patent eligibility of independent claims 35 and 43 to challenge this rejection and make no separate arguments concerning the patent eligibility of the dependent claims. *See* Br. 3–5, 6. We select independent claim 35<sup>5</sup> as representative. Thus, claims 36–52 stand or fall with claim 35. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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<sup>5</sup> The lack of clarity in claim 35’s limitation related to detecting a fraud pattern does not impact our ability to resolve the issues raised by Appellants with respect to patent eligibility. In the interest of judicial efficiency, we consider the rejection of claims 35 and its dependent claims under 35 U.S.C. § 101 on the merits.

Turning to the first step, the Examiner determined that the claims are directed to the abstract idea of “managing a network based talent contest, in a fair and transparent manner so that the public participation is supported” or “managing a talent contest by detecting voter fraud,” which are methods of organizing human activities. Final Act. 3. The Examiner argues that the idea of managing a talent contest is akin to the idea of managing a game of Bingo, which the Federal Circuit determined was patent ineligible in *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005 (Fed. Cir. 2014).

In response, Appellants broadly assert that “it is respectfully submitted that the claims of the present application are unlike that of any of the examples provided by the Court.” Br. 4. Appellants, however, do not provide any explanation as to why claim 35 is not directed to a method of organizing human activities (i.e., managing a talent contest), nor do they respond to the Examiner’s reasoning regarding *Planet Bingo*. We, thus, are not persuaded by Appellants that the Examiner erred in determining that claim 35 was directed to an abstract idea.

Turning to the second step, the Examiner determined that claim 35 does not include additional elements that are sufficient to amount to significantly more than an abstract idea. Final Act. 4–7. The Examiner determined that the claimed processor and network are nothing more than generic computer components performing well understood, routine, and conventional functions. *See id.*

In response, Appellants broadly assert that the claims of the present application provide a substantial improvement over the art in the field of managing presentation of entertainment media through a network which further includes the substantial limitations of a voting system provides

entertainers with reliable results for votes cast by viewers of the entertainment media.

Br. 4. Appellants further “respectfully submit that the claims of the present application are necessarily rooted in computer technology rather than simply implement[ing] old ideas on a computer.” *Id.* at 5 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)).

The claims at issue in *DDR Holdings* were directed to retaining website visitors, which the court determined was a problem “particular to the Internet.” *DDR Holdings*, 773 F.3d at 1257. The Court also determined that the invention was “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks” and that the claimed invention did not simply use computers to serve a conventional business purpose. *Id.*; see also *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1338 (Fed. Cir. 2016) (determining claims which were directed to an improvement in the functioning of a computer and were not simply adding conventional computer components to well-known business practices).

Here, however, the claims are not directed to an improvement in the functioning of the computer, or to an improvement necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks. The claims implement the idea of managing a talent contest on a computer. “[I]f 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.” *Alice*, 134 S. Ct. at 2358 (quoting *Mayo*, 132 S. Ct. at 1301). In this case, the

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claims recite a generic computer implementation of the covered abstract idea, of managing a talent contest.

Accordingly, the rejection of claims 36–52 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter is affirmed.

#### DECISION

The decision of the Examiner to reject claims 35–52 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. § 41.50(f).

AFFIRMED