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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* DOUG DOHRING, WILLIAM McCAFFREY,  
STEPHANIE YOST, DAVID HENDRY, LEE BORTH and  
NATHAN DROBNACK

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Appeal 2016-003423  
Application 12/946,627  
Technology Center 3700

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Before STEVEN D.A. McCARTHY, MICHELLE R. OSINSKI and  
PAUL J. KORNICZKY, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 At least one of the claims of the underlying application being twice-  
3 rejected, the Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the  
4 Examiner's decision rejecting claims 1, 5 and 8–44. We have jurisdiction  
5 under 35 U.S.C. § 6(b).

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<sup>1</sup> The Appellants identify the real party in interest as Age of Learning, Inc. (*See* “Appellant’s Brief under 37 C.F.R. § 41.37,” dated June 12, 2015, at 3).

1           We sustain the rejection of claims 1, 5 and 8–44 under 35 U.S.C.  
2 § 101 as being directed to ineligible subject matter. (*See* Examiner’s  
3 Answer, mailed Dec. 14, 2015 (“Ans.”), at 2–5).

4           We do not sustain the rejections of claims 1, 5, 8–19, 21–23, 25–34,  
5 36 and 42–44 under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over  
6 LoSasso (US 6,755,659 B2, issued June 29, 2004), Mansfield (US  
7 2006/0105313 A1, publ. May 18, 2006) and Glezerman (US 2003/0207237  
8 A1, publ. Nov. 6, 2003); of claims 20 and 24 under § 103(a) as being  
9 unpatentable over LoSasso, Mansfield, Glezerman and Snyder (US  
10 2008/0057482 A1, publ. Mar. 6, 2008); or of claims 35 and 37–41 under  
11 § 103(a) as being unpatentable over LoSasso, Mansfield, Glezerman and  
12 Woolf (US 2008/0254438 A1, publ. Oct. 16, 2008). (*See* Non-Final Office  
13 Action, mailed Dec. 15, 2014 (“Non-Final Act.”), at 3–13).

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#### THE CLAIMED SUBJECT MATTER

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The appealed claims are directed to computer-based systems and  
methods permitting a mentor to customize learning content for a student.  
(*See* Spec., para. 23). Claims 1, 43 and 44 are independent. Claim 44  
recites:

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44. A method of facilitating the educational development of a learner  
comprising: providing executable instructions to a digital  
processing device comprising an operating system configured to  
perform executable instructions a processor, and a memory  
device to create a web-based educational environment for a  
learner aged 1 year to 10 years old, wherein the educational  
environment comprises: at least one area of skill, interest, or  
expertise; a plurality of learning activities associated with each  
area of skill, interest, or expertise, the learning activities selected  
from the group consisting of: songs, books, poems, puzzles,

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1 games, art activities, and printable activities; and a mentor  
2 guided learning mode comprising:

3 a. a software module for a mentor to select one or  
4 more learners, wherein said software module is adapted  
5 for and accessible by the mentor to the one or more  
6 learners;

7 b. a software module for the mentor to select a  
8 plurality of learning activities from among a population of  
9 activities to create one or more subpopulations of activities  
10 to be completed by one or more learners, wherein said  
11 software module is adapted for and accessible by the  
12 mentor;

13 c. a software module for the mentor to display and  
14 organize the one or more subpopulations of learning  
15 activities, wherein said software module is adapted for and  
16 accessible by the mentor, wherein the organizing  
17 comprises optionally sequencing activities, by the mentor,  
18 within the one or more subpopulations of activities;

19 d. a software module for the mentor to create, name,  
20 and save the one or more subpopulations of learning  
21 activities associated with the one or more learners,  
22 wherein said software module is adapted for and  
23 accessible by the mentor;

24 e. a software module for the mentor to monitor the  
25 progress of the one or more learners in completing the one  
26 or more subpopulations of activities, wherein the software  
27 module is adapted for and accessible by the mentor; and

28 f. a software module for displaying and providing  
29 access to the one or more subpopulations of learning  
30 activities to be completed by the one or more learners,  
31 wherein said software module is adapted for and  
32 accessible by the one or more learners;

33 whereby the mentor guided learning mode provides tools for the  
34 mentor to design a customized lesson, unit, or level of study and  
35 tools for the learners to access the lesson, unit, or level of study  
36 customized by the mentor.

1 Claim 1 recites an “educational system assembling platform comprising: a  
2 digital processing device [and a computer program] including executable  
3 instructions that create a web-based educational environment.” Claim 43  
4 recites “[n]on-transitory computer readable media encoded with a computer  
5 program including instructions executable by a digital processing system to  
6 create a web-based educational environment.” In each case, the educational  
7 environment comprises a “mentor guided learning mode” including each of  
8 the software modules a.–f. recited in claim 44.

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#### NON-OBVIOUSNESS

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Two such software modules are:

12

a software module for the mentor to display and organize  
13 the one or more subpopulations of learning activities,  
14 wherein said software module is adapted for and  
15 accessible by the mentor, wherein the organizing  
16 comprises optionally sequencing activities, by the mentor,  
17 within the one or more subpopulations of activities; . . .

18

[and]

19

a software module for the mentor to create, name, and save  
20 the one or more subpopulations of learning activities  
21 associated with the one or more learners, wherein said  
22 software module is adapted for and accessible by the  
23 mentor.

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LoSasso describes a “system and method [that] facilitate creation,  
25 implementation and utilization of computer-based simulations by personnel  
26 involved in a wide range of educational, professional and/or business  
27 pursuits.” (LoSasso, col. 7, ll. 21–29). In particular, LoSasso describes a  
28 web-based educational environment including interactive sales  
29 representation scenarios, searchable by a learner. (*See* LoSasso, col. 4, ll.  
30 11–13 & col. 7, ll. 7–36). These scenarios may be created by means of “an

1 administrative interface that communicates with a processor and a memory  
2 unit.” (LoSasso, col. 5, ll. 60–65; *see also id.*, col. 7, ll. 42–53). LoSasso  
3 also teaches that “scenario(s) created according to [LoSasso’s teachings]  
4 may be provided to users on conventional media, e.g., compact disc, floppy  
5 disc, or the like, through conventional retail outlets.” (LoSasso, col. 4, ll.  
6 22–26; *see also id.*, col. 7, ll. 53–58). Although LoSasso describes enabling  
7 administrative users to design courses, as well as providing users (that is,  
8 learners) “with the ability to search existing scenarios on the system, e.g., by  
9 subject matter, product industry, need, customer, segment, and geography”  
10 (LoSasso, col. 4, ll. 11–13), LoSasso teaches neither mentor guided learning  
11 nor the selection of subpopulations of learning activities (that is, scenarios).

12       Mansfield describes software tools permitting an educator to custom  
13 design lesson plans for individual autistic or learning-impaired students (*see*  
14 Mansfield, paras. 14 & 50). In accordance with one described method,  
15 Mansfield’s software displays a list of student names from the student  
16 records *II* maintained in a computerized database; and permits an educator  
17 to select a particular student. (*See* Mansfield para. 50; *see also id.*, paras.  
18 42–44). The software also permits the educator to select a domain, that is, a  
19 skill set, the student needs to learn. Once the educator has selected a  
20 domain, the software displays teaching activities appropriate to the skill set,  
21 as well as to the student’s skill level and learning preferences. (*See*  
22 Mansfield, paras. 51 & 52; *see also id.*, para. 33 (listing domains into which  
23 teaching activities might be organized)). The educator then uses the  
24 software to select at least one teaching activity for inclusion into a lesson  
25 plan. (*See* Mansfield, para. 52; *see also id.*, paras. 45 & 46). The lesson

1 plan ultimately is displayed to a teacher for presentation to the student. (*See*  
2 Mansfield, para. 62).

3 Mansfield contemplates designing plural lesson plans in different  
4 domains for a student. (*See* Mansfield, para. 56 (explaining that the software  
5 “allows flexibility between lesson plans and respective exercises (activities)  
6 of different domain areas per student.”)). In this sense, at least, Mansfield  
7 contemplates the selection of subpopulations of the entire population of  
8 teaching activities for presentation to a student.

9 That said, the Appellants correctly point out that the Examiner has not  
10 shown that either LoSasso or Mansfield describes “a software module for *the*  
11 *mentor* to . . . organize the one or more subpopulations of learning  
12 activities,” as recited in claims 1, 43 and 44. (Italics added for emphasis).  
13 (“Appellant’s Brief under 37 C.F.R. § 41.37,” dated June 12, 2015 (“Appeal  
14 Brief” or “App. Br.”), at 16 & 17). Even assuming, as the Examiner finds,  
15 that Mansfield’s software organizes the subpopulation of learning activities  
16 for display to the educator (*See* Ans. 16), the software does not thereby  
17 enable the mentor (that is, the educator) to organize the subpopulation.  
18 Likewise, the organization of the teaching activities into domains within the  
19 described system (*see* Non-Final Act. 5, citing Mansfield, para. 33) does not  
20 imply enabling the educator to organize subpopulations.

21 Glezerman describes a virtual learning and entertainment environment  
22 for children in the range of three-years-old to eight-years-old. Means are  
23 provided to allow a parent, teacher or guardian to set parameters governing  
24 the manner in which the environment responds to a child, so as to encourage  
25 the child to engage in desired activities and discourage the child from  
26 engaging in undesired activities. (*See* Glezerman, paras. 5 & 17). The

1 Examiner cites Glezerman for these teachings, as well as the teaching that  
2 learning activities suited to a child three-years-old to eight-years-old may  
3 include “answer games, puzzles, brain teasers, vocabulary games, passive  
4 and adventure game play, and competitive and non-competitive games.”  
5 (Final Act. 7, citing Glezerman, para. 46). These teachings do not remedy  
6 the aforementioned deficiencies in the combined teachings of LoSasso and  
7 Mansfield. We do not sustain the rejection of claims 1, 5, 8–19, 21–23, 25–  
8 34, 36 and 42–44 under § 103(a) as being unpatentable over LoSasso,  
9 Mansfield and Glezerman.

10 Snyder describes a computer network programmed to implement a  
11 curriculum divided into a large number of curriculum modules. Each such  
12 curriculum module encompasses a relatively small, discrete unit of  
13 curricular material. (*See generally* Snyder, paras. 116–18). The Examiner  
14 cites Snyder for the teaching that a system may present to teachers modules  
15 with known, predefined durations. (*See* Final Act. 11 & 12, citing Snyder,  
16 paras. 118 & 182). These teachings do not remedy the aforementioned  
17 deficiencies in the combined teachings of LoSasso and Mansfield. We do  
18 not sustain the rejection of claims 20 and 24 under § 103(a) as being  
19 unpatentable over LoSasso, Mansfield, Glezerman and Snyder.

20 Woolf describes a computer learning system *100* capable of  
21 interacting with teacher administrators (that is, individuals with authority to  
22 administer educational services to a population of students) through separate  
23 teacher administrator user interfaces *1200* accessible through administrator  
24 client devices *140*. (*See* Woolf, paras. 35 & 198; & Figs. 1 & 12). A  
25 learning service program *106* receives learning data for a plurality of user  
26 (that is, students). The learning service program *106* reacts to administrator



1 selected parameters entered through a teacher administrator user interface  
2 1200 to process the learning data for display to a teacher administrator. (*See*  
3 Woolf, paras. 196 & 198; & Fig. 2).

4

5

#### INELIGIBLE SUBJECT MATTER

6

The Supreme Court has established a two-step analysis for  
7 determining whether the subject matter of a claim is eligible for patent  
8 protection. First, one must determine whether the claim is “directed to one  
9 of [the] patent-ineligible concepts,” such as an abstract idea. *Alice Corp. v.*  
10 *CLS Bank Int’l*, 134 S.Ct. 2347, 2355 (2014). Second, if so, one must  
11 determine if the remainder of the claim recites an “inventive concept,” such  
12 that the claim as a whole recites a specific application of the patent-  
13 ineligible concept. *Id.* at 2357 & 2358.

14

The Appellants’ arguments do not distinguish between the respective  
15 language of independent claims 1, 43 and 44; neither do the Appellants  
16 appear to argue any dependent claim separately. Claim 44 will be taken as  
17 representative. *See* 37 C.F.R. § 41.37(c)(1)(iv). Even apart from this  
18 procedural consideration, it is noted that, although claim 1 recites an  
19 “educational system assembling platform comprising: a digital processing  
20 device [and a computer program] including executable instructions that  
21 create a web-based educational environment[;]” claim 43 recites “[n]on-  
22 transitory computer readable media encoded with a computer program  
23 including instructions executable by a digital processing system to create a  
24 web-based educational environment[;]” and claim 44 recites “[a] method of  
25 facilitating the educational development of a learner comprising: providing  
26 executable instructions . . . to create a web-based educational

1 environment[,]” in each case the educational environment comprises a  
2 “mentor guided learning mode” including each of the software modules a.–f.  
3 recited in claim 44. In assessing a rejection for ineligible subject matter  
4 under § 101, we look not to the name or intended use assigned to the  
5 claimed subject matter in the preamble, but to the nature of the claimed  
6 subject matter as a whole, to determine whether the claim falls within the  
7 “abstract idea” exception. *See CyberSource Corp. v. Retail Decisions, Inc.*,  
8 654 F.3d 1366, 1374 (Fed. Cir. 2011) (“Regardless of what statutory  
9 category (‘process, machine, manufacture, or composition of matter,’ 35  
10 U.S.C. § 101) a claim’s language is crafted to literally invoke, we look to the  
11 underlying invention for patent-eligibility purposes”). Therefore, we may  
12 treat claims 1, 43 and 44 as interchangeable for purposes of eligibility under  
13 § 101.

14 We address the two steps of the test in turn. Only those arguments  
15 actually made by the Appellants have been considered. Arguments that the  
16 Appellants could have made, but chose not to make, have not been  
17 considered and are deemed to be waived. *See 37 C.F.R. § 41.37(c)(1)(iv); In*  
18 *re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011).

19

#### 20 *First Step*

21 Claim 44 recites a “method of facilitating the educational  
22 development of a learner.” The method includes the step of “providing  
23 executable instructions to a digital processing device . . . to create a web-  
24 based educational environment for a learner aged 1 year to 10 years old.”  
25 The web-based educational environment includes “a software module for  
26 displaying and providing access to the one or more subpopulations of

1 learning activities to be completed by the one or more learners, wherein said  
2 software module is adapted for and accessible by the one or more learners.”

3         The Examiner determines that claim 44 is directed to the abstract idea  
4 of “automating methods of teaching[,] formerly recited as [the] idea of  
5 monitoring and assisting a learner as [the learner proceeds] through one or  
6 more computer based learning activities.” (Ans. 2). According to the  
7 Examiner, the idea of monitoring and assisting a learner falls “under the  
8 category of method[s] of organizing human activity.” (*Id.*) The Appellants  
9 criticize the Examiner for “[d]efining the idea so narrowly that it simply  
10 restates the invention—and expressly incorporating the technical field being  
11 improves into the definition.” (App. Br. 11).

12         A claim in a patent application, as a description of the scope of an  
13 exclusive right sought by an applicant, may be characterized by a spectrum  
14 of abstract ideas of greater or lesser generality, each more or less closely  
15 corresponding to the precise limitations recited in the claim. *Cf. Nichols v.*  
16 *Universal Pictures Corp.*, 45 F.2d 119, 121 (2d Cir. 1930) (recognizing, in  
17 the context of copyright infringement of a play, that “[u]pon any work . . . a  
18 great number of patterns of increasing generality will fit equally well, as  
19 more and more of the incident is left out.”). An unhappy medium is reached,  
20 and rejection is justified, when an Examiner articulates an abstract idea so  
21 closely aligned with the limitations of the claim that the claim, as a whole,  
22 becomes an expression of the idea rather a practical application. So long as  
23 the idea articulated by the Examiner is, indeed, abstract, the narrowness of  
24 the idea articulated by the Examiner, that is, the closeness with which the  
25 idea aligns with the recited limitations, is a virtue.

1           The Examiner has not cited a court decision, or guidance from the  
2 Director, stating that “monitoring and assisting a learner as [the learner  
3 proceeds] through one or more computer based learning activities” (Ans. 2)  
4 is an abstract idea. Given the relatively short period of time that has elapsed  
5 since *Alice* was decided in 2014, neither the courts nor the Director have had  
6 the opportunity to fill in, with decisions or guidance, the entire range of what  
7 constitutes ineligible abstract ideas. Nevertheless, displaying and providing  
8 access to learning activities to be completed by the one or more learners is  
9 properly characterized as an abstract idea.

10           In *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266 (Fed.  
11 Cir. 2016), our reviewing court addressed the eligibility of a claim for a  
12 media system for delivering streaming content from a network-based  
13 resource to a handheld wireless electronic device:

14           A media system, comprising:

15                   a network based media managing system that maintains a  
16 library of content that a given user has a right to access and a  
17 customized user interface page for the given user;

18                   a collection of instructions stored in a non-transitory  
19 storage medium and configured for execution by a processor of  
20 a handheld wireless device, the collection of instructions  
21 operable when executed: (1) to initiate presentation of a  
22 graphical user interface for the network based media managing  
23 system; (2) to facilitate a user selection of content included in the  
24 library; and (3) to send a request for a streaming delivery of the  
25 content; and

26                   a network based delivery resource maintaining a list of  
27 network locations for at least a portion of the content, the  
28 network based delivery resource configured to respond to the  
29 request by retrieving the portion from an appropriate network  
30 location and streaming a representation of the portion to the  
31 handheld wireless device.

1 (*Id.* at 1267 & 1268). Our reviewing court held that this claim was directed  
2 to the abstract idea of “delivering user-selected media content to portable  
3 devices.” (*Id.* at 1269). Although claim 44 recites a module for delivering a  
4 specific type of media content, namely, learning activities, rather than  
5 content in general, the distinction lies in the manner in which the content is  
6 perceived and understood by the learner. The recitation of “a software  
7 module for displaying and providing access to the one or more  
8 subpopulations of learning activities to be completed by the one or more  
9 learners, wherein said software module is adapted for and accessible by the  
10 one or more learners” is an expression of an abstract idea.

11 The concept of monitoring and assisting the learner as the learner  
12 proceeds through learning activities is equally abstract. In *Vehicle*  
13 *Intelligence & Safety LLC v. Mercedes-Benz USA, LLC*, 635 Fed. Appx. 914  
14 (Fed. Cir. 2015), our reviewing court addressed a claim for monitoring an  
15 equipment operator for intoxication, physical impairment, medical  
16 impairment or emotional impairment; and intervening as necessary:

17 8. A method to screen an equipment operator for impairment,  
18 comprising:

19 screening an equipment operator by one or more expert  
20 systems to detect potential impairment of said equipment  
21 operator;

22 selectively testing said equipment operator when said  
23 screening of said equipment operator detects potential  
24 impairment of said equipment operator; and

25 controlling operation of said equipment if said selective  
26 testing of said equipment operator indicates said  
27 impairment of said equipment operator, wherein said  
28 screening of said equipment operator includes a time-  
29 sharing allocation of at least one processor executing at  
30 least one expert system.

1 (*Id.* at 916). Our reviewing court held that this claim was directed to the  
2 abstract idea of “testing operators of any kind of moving equipment for any  
3 kind of physical or mental impairment.” (*Id.* at 917). As support for its  
4 determination that the claim was directed to an abstract idea, the court  
5 observed that:

6       None of the claims at issue are limited to a particular kind of  
7       impairment, explain how to perform either screening or testing  
8       for any impairment, specify how to program the “expert system”  
9       to perform any screening or testing, or explain the nature of  
10       control to be exercised on the vehicle in response to the test  
11       results.

12 (*Id.*)

13       Appealed claim 44 recites “a software module for the mentor to  
14       monitor the progress of the one or more learners in completing the one or  
15       more subpopulations of activities, wherein the software module is adapted  
16       for and accessible by the mentor.” As was the case in *Vehicle Intelligence*,  
17       permitting a mentor to monitor learners as those learners interact with  
18       learning activities is an abstract idea. The analogy is a loose one—nothing  
19       in the Specification suggests monitoring students specifically for  
20       intoxication, physical impairment, medical impairment or emotional  
21       impairment. Nevertheless, the analogy is sufficiently close to imply that  
22       monitoring the behavior and performance of others is an abstract idea.

23       Indeed, appealed claim 44 is more abstract, and less specific, than the  
24       claim at issue in *Vehicle Intelligence*. In *Vehicle Intelligence*, the equipment  
25       operator was monitored while operating presumable physical equipment,  
26       whereas the mentor recited in claim 44 monitors the learners receipt and  
27       interaction with media content, that is, with learning activities. Furthermore,  
28       the claim at issue in *Vehicle Intelligence* recited monitoring of the equipment

1 operator by means of expert systems, whereas appealed claim 44 does not  
2 recite how the learner is to be monitored. The claim at issue in *Vehicle*  
3 *Intelligence* positively recited intervention in the form of controlling the  
4 equipment in the event of operator impairment, whereas appealed claim 44  
5 merely leaves open the possibility that the mentor might assist the learner.  
6 Therefore, the Examiner correctly characterizes “monitoring and assisting a  
7 learner as [the learner proceeds] through one or more computer based  
8 learning activities” as an abstract idea.

9 The Appellants argue that their claims are not directed to an abstract  
10 idea because of a “total lack of potential for the claims to ‘tie up’ and  
11 preempt every application of monitoring and assisting a learner as they  
12 proceed through one or more computer based learning activities.” (App. Br.  
13 12; *see also* “Appellants’ Reply Brief,” dated Feb. 10, 2016 (“Reply Br.”), at  
14 5). “[T]he prohibition against patenting abstract ideas ‘cannot be  
15 circumvented by attempting to limit the use of [an idea] to a particular  
16 technological environment.’” *Bilski v. Kappos*, 561 U.S. 593, 610 & 611  
17 (2009) (quoting *Diamond v. Diehr*, 450 U.S. 175, 191 & 192 (1981)); *see*  
18 *also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 & 1363  
19 (Fed. Cir. 2015) (“And that the claims do not preempt all price optimization  
20 or may be limited to price optimization in the e-commerce setting do not  
21 make them any less abstract.”). Claim 44 preempts the abstract idea of  
22 “monitoring and assisting a learner as [the learner proceeds] through one or  
23 more computer based learning activities” (Ans. 2), at least in the field of  
24 creating a web-based educational environments for learners aged 1 year to  
25 10 years old. On this basis alone, claim 44 is directed to the articulated  
26 abstract idea.

1           The Appellants also seek to analogize this case to *DDR Holdings,*  
2 *LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). In *DDR Holdings*,  
3 the claims at issue related to methods for displaying to a website visitor  
4 seeking product information from a merchant a composite web page  
5 presenting both the product information from the merchant and the “look  
6 and feel” of the host website. *See id.* at 1250. Our reviewing court  
7 determined that the claims at issue in *DDR Holdings* were not directed to an  
8 abstract idea because the claimed subject matter addresses “a challenge  
9 particular to the Internet.” *Id.* at 1257. The court went so far as to declare  
10 that “the claimed solution [was] necessarily rooted in computer technology  
11 in order to overcome a problem specifically arising in the realm of computer  
12 networks.” *Id.*

13           The claims at issue in *DDR Holdings* were not analogous to claim 44.  
14 Claim 44 does not address a problem specific to computer technologies or  
15 computer networks. Instead, the claims recite configuring modules to assist  
16 mentors in pursuing an activity, namely, the design of customized  
17 educational content. (*See* Ans. 13). The Appellants’ Specification does not  
18 allege that the Appellants invented this activity; instead, the Specification  
19 merely asserts that “[e]xisting educational systems [do not] provide powerful  
20 tools to facilitate the involvement mentors in the design of customized  
21 educational content.” (Spec. para. 23). This statement supports the  
22 Examiner’s determination that claim 44 is directed to “automating methods  
23 of teaching” (Ans. 2) and not to solving a problem or problems unique to  
24 computer systems or networks. The Appellants have not identified any steps  
25 recited in claim 44 beyond those which a mentor might routinely and  
26 consciously perform, even without the claimed system, when planning a



1 lesson for a learner of the recited age range. *See SmartGene, Inc. v.*  
2 *Advanced Bio. Labs., SA*, 555 Fed. Appx. 950, 955 (Fed. Cir. 2014) (holding  
3 that the claim at issue in that case was directed to an abstract idea because  
4 the claim did not recite an improvement to computer technology; and  
5 because the claim did not “purport to identify any steps beyond those which  
6 doctors routinely and consciously perform” when prescribing a treatment  
7 regimen). The Examiner correctly characterizes claim 44 as directed to the  
8 abstract idea of “monitoring and assisting a learner as [the learner proceeds]  
9 through one or more computer based learning activities.” (Ans. 2).

10  
11 *Second Step*

12 It remains to address the second step of the analysis. The Appellants  
13 argue that the subject matter of claim 44 is eligible for patent protection  
14 because the subject matter represents an improvement to a technical field,  
15 namely, creating web-based educational environments. (*See App. Br. 13*).  
16 As discussed earlier, however, web-based educational environments are  
17 themselves abstract ideas. In this instance, at least, the web-based  
18 educational environment is an undifferentiated means for arranging and  
19 delivering a particular type of media content, namely, learning activities.  
20 *See Affinity Labs of Tex.* at 1269 (holding that “delivering user-selected  
21 media content to portable devices” was an abstract idea). Because the  
22 creation of web-based educational environments is not a technical field for  
23 purposes of a patent eligibility analysis, the Appellants’ argument is not  
24 persuasive.

25 The Appellants argue that the subject matter of claim 44 is eligible for  
26 patent protection because the claimed method includes “specific limitations

1 other than what is well-understood, routine and conventional in the field.”  
2 (App. Br. 14 (quoting *2014 Interim Guidance on Patent Subject Matter*  
3 *Eligibility*, 79 Fed. Reg. 74618, 74624 (Dec. 16, 2014)). More specifically,  
4 on page 15 of the Appeal Brief, the Appellants argue that the various  
5 modules recited as necessary components of “a mentor guided learning  
6 mode” within the web-based educational environment created in accordance  
7 with the executable instructions provided to the digital processing device in  
8 the course of performing the recited method<sup>2</sup> are designed to facilitate the  
9 mentor’s performance of unconventional steps in designing a customized,  
10 lesson, unit or level of study.

11 One of the modules recited in claim 44 is “for a mentor to select one  
12 or more learners.” Another recited module is “for the mentor to select a  
13 plurality of learning activities from among a population of activities to create  
14 one or more subpopulations of activities to be completed by one or more  
15 learners.” Yet another such module is “for the mentor to create, name, and  
16 save the one or more subpopulations of learning activities associated with  
17 the one or more learners.” Claim 44 does not further limit the manner in  
18 which the one or more learners, or the plurality of learning activities, are to

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<sup>2</sup> On page 15 of the Appeal Brief, the Appellants argue that the subject matter of claim 44 “add[s] unconventional steps that confine the claim to a particular useful application.” (Emphasis omitted). The only actual step in the claimed method is “providing executable instructions to a digital processing device . . . to create a web-based educational environment for a learner aged 1 year to 10 years old.” The remainder of the claim encompasses “a mentor guided learning mode” within the web-based educational environment created according to the executable instructions. Providing executable instructions to a digital processing device is well-known, routine and conventional (*see* Ans. 4); and, as discussed earlier, creating web-based educational environments is not a technical field.

1 be selected; or in which subpopulations of learning activities are to be  
2 created, named or saved. Instead, the claim merely “assumes the availability  
3 of physical components for input, memory, look-up, comparison, and  
4 output.” *SmartGene, Inc.*, 555 Fed. Appx. at 955. (*See also* Ans. 4 (“use of  
5 a processing device, memory, computer network, [operating system] and  
6 executable code to run computer software to perform functions and interface  
7 with a user is well known. . . . Creating computer files, naming files or  
8 tagging with metadata and storing files for later retrieval are well-known  
9 computer operations that do not fundamentally alter . . . the technology.”)).

10 Claim 44 also recites a module “for the mentor to display and  
11 organize the one or more subpopulations of learning activities, . . . wherein  
12 the organizing comprises optionally sequencing activities, by the mentor,  
13 within the one or more subpopulations of activities.” Displaying  
14 information was a well-known, routine and conventional use of a digital  
15 processing device. *Cf. In re Abele*, 684 F.2d 902 (CCPA 1982) (holding that  
16 claim 5, which recited a “method of displaying data in a field comprising:  
17 . . . displaying the value of said difference [between a local data value and an  
18 average data value] as a signed gray scale at a point in a picture which  
19 corresponds to said data point,” *id.* at 908, “present[ed] no more than the  
20 calculation of a number and display of the result,” *id.* at 909, and so was  
21 ineligible for patent protection). To the extent that the digital processing  
22 device might participate in the organizing (that is, the sequencing) of the  
23 subpopulation of learning activities, sorting algorithms also were well-  
24 known, routine and conventional. (*See generally* D.E. Knuth, 3 THE ART OF  
25 COMPUTER PROGRAMMING (“Knuth”) 1–5 (2d edition, Addison-Wesley  
26 1998)).

1           Therefore, the Examiner correctly determines that representative  
2 claim 44 is directed to an abstract idea, namely, “monitoring and assisting a  
3 learner as [the learner proceeds] through one or more computer based  
4 learning activities.” (Ans. 2). The Examiner also correctly determines that  
5 claim 44, as a whole, fails to recite a specific application of the abstract idea.

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DECISION

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We sustain the rejection of claims 1, 5 and 8–44 under 35 U.S.C.  
§ 101 as being directed to ineligible subject matter.

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We do not sustain the rejections of claims 1, 5, 8–19, 21–23, 25–34,  
36 and 42–44 under § 103(a) as being unpatentable over LoSasso, Mansfield  
and Glezerman; of claims 20 and 24 under § 103(a) as being unpatentable  
over LoSasso, Mansfield, Glezerman and Snyder; or of claims 35 and 37–41  
under § 103(a) as being unpatentable over LoSasso, Mansfield, Glezerman  
and Woolf.

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Therefore, we AFFIRM the Examiner’s decision rejecting claims 1, 5  
and 8–44.

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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).

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AFFIRMED