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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* THOMAS V. SANGUINETTI

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Appeal 2016-004022<sup>1</sup>  
Application 13/966,215  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and  
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 3–10, and 21–36. We have jurisdiction to review the case under 35 U.S.C. §§ 134(a) and 6.

The invention relates generally to sending “virtual object[s].” Spec.

¶ 1.

Claim 1 is illustrative:

1. A computer-implemented method for selecting and transmitting images to users of a social network, said images

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<sup>1</sup> The Appellants identify Craze, Inc. as the real party in interest. Br. 3.

being associated with gifts to one or more of the users, wherein the method comprises:

identifying, by one or more processing devices, a first image associated with a gift given by a first user of a social network to a second user of the social network;

causing the first image to display on one or more computing devices operated by one or more additional users of the social network prior to delivery of the gift to the second user; and

causing, by the one or more processing devices, a second image associated with the gift to display on the one or more computing devices operated by the one or more additional users only after initiating delivery of the gift to the second user.

Claims 1, 3–10, and 21–36 are rejected under 35 U.S.C. § 101 as directed to ineligible subject matter in the form of an abstract idea.

We AFFIRM.

#### PRINCIPLES OF LAW

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 implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 (“On their face, the claims before us are drawn to the concept of

intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (“Analyzing respondents’ claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter.”); *Parker v. Flook*, 437 U.S. 584, 594–595 (1978) (“Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) (“They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.”).

The following method is then used to determine whether what the claim is “directed to” is an abstract idea:

[T]he decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided. *See, e.g., Elec. Power Grp.*, 830 F.3d [1350], 1353–54 [Fed. Cir. 2016]. That is the classic common law methodology for creating law when a single governing definitional context is not available. *See generally* Karl N. Llewellyn, *The Common Law Tradition: Deciding Appeals* (1960). This more flexible approach is also the approach employed by the Supreme Court. *See Alice*, 134 S. Ct. at 2355–57. We shall follow that approach here.

*Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (footnote omitted).

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Flook*, 437 U.S. at 594–95; and basic tools of

scientific and technological work, *Benson*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber, *Diamond*, 450 U.S. at 184 n.7, “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,” and a process for manufacturing flour, *Gottschalk*, 409 U.S. at 67.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This is a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.*

#### ANALYSIS

Appellant’s arguments fail to persuade us that the claims are not directed to an abstract idea because, according to the Appellant, the “claims will not preempt others from ‘notifying users of a delivery’ in general,” and because “no factual evidence has been provided to prove that the particular claim limitations, and combination thereof, are purely conventional.” *See generally* Br. 5–9. In accordance with *Mayo* and *Alice*, we begin our evaluation of the Appellant’s assertions with what the claims are “directed to,” although we note that the Appellant does not challenge expressly the Examiner’s finding that the claims are “directed to” an abstract idea. *See generally* Br. 5–9.

The express language of independent claim 1 indicates that it is directed to identifying and sending content to one or more destinations, then sending additional content after an event has occurred. *See also* Spec. ¶ 1

(“the invention relates to a system, method and computer program product . . . for a conveying user to send a virtual object to an electronic ID, virtual identity or the like of a receiving user and for sending a realized object (e.g., real-world tangible product or service) to the physical contact address of the receiving user without *a priori* physical contact address of the receiving user by the conveying user.”). The claim is similar to two cases that our reviewing court has found are directed to abstract ideas. *See Amdocs* 841 F.3d at 1294. For example, the Examiner identifies, in support of the rejection, that independent claim 1 is similar to the claims in *Accenture Global Services*, where an event triggers the application of rules to determine tasks to be completed, much like sending additional content “after initiating delivery” in the present claims. Answer 9 (*citing Accenture Global Services, GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336 (Fed. Cir. 2013) (rehearing en banc denied (Fed. Cir. 2013), cert. denied, 134 S. Ct. 2871 (Mem) (2014))). Independent claim 1 is also similar to the claims in *Cyberfone*, where information is transmitted according to its classification to multiple destinations. Answer 9–10 (*citing Cyberfone Sys., LLC v. CNN Interactive Grp.*, 558 Fed. App’x. 988 (Fed. Cir. 2014)).

Thus, because we find that what independent claim 1 is “directed to” is similar to other claims found by the courts to be “directed to” abstract ideas, we are unpersuaded that the Examiner erred in asserting that independent claim 1 is directed to an abstract idea, even without purported factual evidence.

Turning to the second step of the *Alice* analysis, because we find that independent claim 1 is directed to an abstract idea, the claim must include an “inventive concept” in order to be patent-eligible, i.e., there must be an

element, or combination of elements, which is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself.

To that end, we are unpersuaded by the Appellant’s argument that the claims recite “significantly more than an abstract idea,” because, according to the Appellant, the claims “relate to very particular features that extend far beyond the abstract idea,” as “two images that serve different purposes beyond notification.” Br. 8–9. The Appellant indicates significance that the images “represent[ ]” and “convey[ ] a virtual representation” of specific meanings to the receiving users, such as to “indicate that fulfillment [had] occurred.” Spec. ¶¶ 12, 27, 48 (cited at Br. 3–4). The Appellant has not shown, however, how the particular meanings imposed on the images selected for transmission affect the performance of the relevant portion of the method, which involves identifying images to transmit, and transmitting the images, some being transmitted only after the occurrence of an event. We are unclear how what meaning the images are *intended* to represent is anything more than an abstraction that does not affect the performance of the method steps of identifying and transmitting the images. Indeed, the content of the images would appear to be nothing more than printed matter. *See In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004).

Additionally, independent claim 1 only utilizes what is essentially a generic computer, which we are unpersuaded is “significantly more.” *See* Spec. ¶¶ 50 (“any other programmable device”), 52 (“[a]ny suitable programming language”), and 55 (“a general-purpose central processing unit, multiple processing units, dedicated circuitry for achieving functionality, or other systems”). “[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise

ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal citations and quotation marks omitted).

Dependent claims 3–10 expand on where and when images are displayed, the nature of the image transmitted, and the means of communicating the images recited in claim 1. We are unpersuaded that anything, however, in dependent claims 3–10 purports to improve computer functioning or “effect an improvement in any other technology or technical field.” *Alice*, 134 S. Ct. at 2359. Nor are we persuaded that the claims solve a problem unique to the Internet, because the Internet is not recited, and not utilized in all embodiments described in the specification, such as at paragraphs 24 and 28. *See DDR Holdings*, 773 F.3d at 1257. The claims also are not adequately tied to “a particular machine or apparatus.” *Bilski v. Kappos*, 561 U.S. 593, 602 (2010).

Because the Appellant has not shown the Examiner erred in asserting (1) that claims 1 and 3–10 are directed to an abstract idea, and (2) that nothing in the claims adds an inventive concept, we sustain the Examiner’s rejection of claims 1 and 3–10 under 35 U.S.C. § 101.

We find no meaningful distinction between independent method claim 1 and either independent “medium” claim 21<sup>2</sup> or independent “system” claim 29; the claims all are directed to the same underlying invention. We, therefore, sustain the rejection under § 101 of claims 21

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<sup>2</sup> Claim 21 recites a “non-statutory computer usable medium.” Based on original claim 17, which recites a “non-transitory computer usable medium,” we interpret the “non-statutory” term in claim 21 as an inadvertent typographical error that instead was intended to be “non-transitory.”



and 29. As the Federal Circuit has made clear, “the basic character of a process claim drawn to an abstract idea is not changed by claiming only its performance by computers, or by claiming the process embodied in program instructions on a computer readable medium.” *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (citing *In re Abele*, 684 F.2d 902 (CCPA 1982)). Additionally, because we find that dependent claims 22–28 and 30–36 lack additional elements that would render the claims patent-eligible, we also sustain the rejection under § 101 of these dependent claims on the same basis as the independent claims from which they depend.

#### DECISION

We AFFIRM the rejection of claims 1, 3–10, and 21–36 under 35 U.S.C. § 101.

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