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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LISANDRO MIGUEL LEJANO,  
ERIK RUBEN RACHO, and CLAUDE JONES

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Appeal 2016–005837  
Application 12/130,378  
Technology Center 3600

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Before ANTON W. FETTING, MICHAEL C. ASTORINO, and  
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

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

Lisandro Miguel Lejano, Erik Ruben Racho, and Claude Jones  
(Appellants) seek review under 35 U.S.C. § 134(a) of the Examiner’s Final

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<sup>1</sup> Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed September 17, 2015) and Reply Brief (“Reply Br.,” filed May 11, 2016), and the Examiner’s Answer (“Ans.,” mailed March 11, 2016), and Final Action (“Final Act.,” mailed February 27, 2015).

Rejection of claims 1–21, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellants invented an approach for organizing an advertising campaign and booking advertisement placements on publisher web sites and networks of publisher web sites. Specification para. 84.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A computer-implemented method comprising:

[1] receiving, via a communication interface, order information comprising an order budget and an available budget;

[2] displaying, via a user interface, the order budget and the available budget, the available budget being an amount of the order budget available for purchasing advertising space;

[3] displaying, via the user interface, a chart that provides a visual representation of a first number of impressions available versus a first proposed cost per impression;

[4] displaying, via the user interface, a slider control that enables a user to specify a number of impressions to purchase;

[5] receiving, via a user manipulation of the slider control, the specified number of impressions;

[6] calculating, via a processor, a second number of impressions available and a second proposed cost per impression, based on the specified number of impressions;

[7] changing the chart while the chart is displayed to display the second number of impressions available versus the second proposed cost per impression instead of the first number of impressions available versus the first proposed cost per impression;

[8] decrementing, via the processor, the available budget according to of the second number of impressions available and the second proposed cost per impression;

and

[9] changing the available budget while the available budget is displayed to display the decremented available budget.

Claims 1–21 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

## ANALYSIS

Method claim 1 receives and displays budget data and displays a chart of number of advertising impressions versus cost per impression, receives via a slider control a number of impressions to purchase, redraws the chart based on this information, and changes the available budget data based on these changes. Thus, claim 1 receives data, some of it with a conventional slider control, and arithmetically changes the data based on the input. None of the limitations recite implementation details for any of these steps, but instead recite functional results to be achieved by any and all possible means. Data reception, arithmetic modification, and display are all generic, conventional data processing operations to the point they are themselves concepts

awaiting implementation details. The sequence of data reception-analysis-display is equally generic and conventional. The ordering of the steps is therefore ordinary and conventional. The remaining claims merely describe parameters that may be entered and fields for such entry, with no implementation details.

### 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 Intl*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, 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 directed to trading in advertising impressions. Final Act. 3.

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 1 does not recite what it is directed to, but the steps in claim 1 result in tracking an advertising budget. The Specification at paragraph 84 recites that the invention relates to an approach for organizing an advertising campaign and booking advertisement placements on publisher web sites and networks of publisher web sites. This shows that claim 1 is directed to booking advertisements, i.e. managing advertising.

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 managing advertising is a fundamental business practice long prevalent in our system of commerce. The use of managing advertising is also a building block of marketing. Thus, managing advertising, like hedging, is an “abstract idea” beyond the scope of §101. *See Alice Corp. Pty. Ltd.* at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. 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 advertising at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. 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 1, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, and display 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 1 is directed to the abstract idea of retrieving, analyzing, and displaying data. This is not altered by the limitations of charting output on a user interface and using a slide control for input. A slider is a standard component of a user interface, which in turn is so conventional that its recitation is no more than abstract conceptual advice to use such a well-known backdrop.

The remaining claims merely describe parameters that may be entered and fields for such entry. 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.

the 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 “implement[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 feature[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 (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.” *Alice Corp. Pty. Ltd.*, 134 S.Ct. 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 receive, analyze, and display data amounts to electronic data query and retrieval—one of the most basic functions of a computer. The limitation of using a slider control is so commonplace as to be equally conventional. 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. The sequence is conventional for data processing. Viewed as a whole, Appellants’ method claims simply recite the concept of advertising as performed by a generic computer. To be sure, the claims recite doing so by advising one to allocate an advertising budget based on

number of impressions and cost per impression and display plural such instances on a graphical user interface having conventional input controls such as sliders. But this is no more than abstract conceptual advice on the parameters for such managing advertising 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 23+ pages of specification spell out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of managing advertising under different scenarios. 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 managing advertising 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.* 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.’”

*Alice Corp. Pty. Ltd.* at 2360.

We are not persuaded by Appellants' argument that the claimed invention is directed to a statutory category and is not an abstract idea. App. Br. 8–9. 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).

Appellants then allege the Examiner failed to sufficiently establish that that the claims were directed to an abstract idea. *Id.* As we find *supra*, the Specification adequately shows that the claims are directed to managing advertising by booking advertisements, and the characterization of such a claimed concept is an abstract idea is aligned with controlling case law. As advertising *per se* is fundamental to any marketing strategy, and managing part of a business strategy even more fundamental. Here, the record is sufficient to support a determination under *Alice* step one that the claims are directed to an abstract concept.

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). 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*, 772 F.3d at 715–16). 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.*

Appellants’ asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited “providing [a] media product for sale at an Internet website;” “restricting general public access to said media product;” “receiving from the consumer a request to view [a] sponsor message;” and “if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query.” 772 F.3d at 712. Similarly, Appellants’ asserted claims recite receiving, analyzing, and displaying data. This is precisely the type of

activity found ineligible in *Ultramercial*. There is nothing intrinsically unique to the Internet in the problem of managing an advertising budget.

We are not persuaded by Appellants' argument that the claims recite a technical solution. *Id.* Appellants point to the recital of displaying data as the technical solution, but data display is part of any generic computer.

We are not persuaded by Appellants' argument that

these actions are directed toward managing online advertising impressions by utilizing the user interface. The user interface displays an order budget and an available budget, and also displays a chart that provides a visual representation of the first number of impressions available versus a first proposed cost per impression. After a user specifies the number of impressions desired, *the chart is changed to display the updated number of impressions available versus a new propose cost per impression.* Also, *the available budget is changed to display a decremented available budget.*

App. Br. 13–14. Managing online advertising impressions is an abstract concept on its face. Advertising impressions are themselves conceptual and managing concepts is a second order of abstraction. Using a user interface, which is part of a generic computer, is insufficient to elevate a concept beyond the abstract.

We are not persuaded by Appellants' argument that the claimed invention is distinguishable from the patent-ineligible abstract idea found in *OIP Technologies, Inc. v. Amazon.com, Inc.*, (Fed. Cir. June 11, 2015).

App. Br. 14–15. It is unclear why Appellants make this argument, as the Examiner did not compare the claims to *OIP*. It is likely this argument is meant to counter the Examiner's finding that the claims "limitations are merely instructions to implement the abstract idea on a computer and require

no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.” Final Act. 3–4. *OIP* held that a claim that recites “sending a first set of electronic messages over a network to devices,” the devices being “programmed to communicate,” storing test results in a “machine-readable medium,” and “using a computerized system . . . to automatically determine” an estimated outcome and setting a price and “gathering . . . statistics generated during said testing about how the potential customers responded to the offers” are computer functions that are well-understood, routine, conventional activities previously known to the industry that do not provide a meaningful limitation on the abstract idea. *OIP, id.* at 1363. Although some of the recited steps may be carried out via a “user interface,” the Appellants do not explain, and we do not see, how this interface solves a technical problem encountered with prior art interfaces in the context of tracking an advertising budget.

In the instant claims, Appellants recite various limitations and conclude that “are more than routine and conventional computer activities such as receiving and storing data.” App. Br. 15. The irony is that claim 1 is exactly such a claim that recites no more than receiving, analyzing, and displaying data as in *OIP* as we find supra with respect to *Elec. Power Grp.* and *DDR*.

We are not persuaded by Appellants' argument that “the claims recite a technical solution for resolving at least technical problems with usability of graphical user interfaces (GUIs) specifically adapted for management of online advertising. The technical features include graphical mechanisms for

a user managing an online advertising account.” App. Br. 15. Thus Appellants cite a generic computer with a generic graphical interface as the technical feature to elevate the claims beyond the realm of abstraction. Presumably Appellants contend that the particular data presented in the interface is what elevates the claims, but the meaning of the data is perceptible only to the human mind and afforded no patentable weight. *See In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969).

We are not persuaded by Appellants' argument that “since the presently claimed invention is allowable over this prior art, then the claimed invention must provide something more than the prior art and therefore ‘something significantly more’ than the abstract idea.” App. Br. 17. “While the claims may not have been anticipated or obvious because the prior art did not disclose [the selection criteria], that does not suggest that the idea of [‘selecting’ errant files] is not abstract.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016); *see Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possible patentable subject matter.” (footnote omitted)).

We are not persuaded by Appellants' argument that

all of the pending claims include limitations that would not necessarily be met by every possible form of an online advertisement brokering communication system. Accordingly, there is no risk that the claim will "tie up" excepted subject matter so as to pre-empt others from using the claimed subject matter.

App. Br. 18. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* [*Alice*] framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Further, that the claims do not preempt all forms of the abstraction or may be limited to the abstract idea in a particular setting do not make them any less abstract. *See OIP Technologies, Inc., id* at 1360–61.

We are not persuaded by Appellants' argument that the steps must be performed on a computer. Reply Br. 2–4. This argument is tautological in that Appellants contend the steps must be performed on a computer because the steps recite using computer hardware. Appellants contend that the steps cannot be performed mentally, but aside from the recited use of computer parts, the steps actually performed of receiving, analyzing, and presenting data may be performed by a human with perhaps paper and pencil.

The remaining arguments are variations on those *supra*.

#### CONCLUSIONS OF LAW

The rejection of claims 1–21 under 35 U.S.C. § 101 as directed to non–statutory subject matter is proper.

#### DECISION

The rejection of claims 1–21 is affirmed.

Appeal 2016-005837  
Application 12/130,378

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