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TARGET BRANDS, INC. 1000 NICOLLET MALL, TPS-3165 MINNEAPOLIS, MN 55403			GILKEY, CARRIE STRODER	
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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* JEREMY PIRLET, ANDREW JOHNSON,  
and KIM UYEN PHAM

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Appeal 2016-006518  
Application 13/341,665  
Technology Center 3600

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Before ANTON W. FETTING, PHILIP J. HOFFMANN, and  
AMEE A. SHAH, *Administrative Patent Judges*.

SHAH, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

The Appellants<sup>2</sup> appeal under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 35–54, which are all of the pending claims.

We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Throughout this decision, we refer to the Appellants’ Appeal Brief (“Appeal Br.,” filed Dec. 4, 2015), Reply Brief (“Reply Br.,” filed June 13, 2016), and Specification (“Spec.,” filed Dec. 30, 2011), and to the Examiner’s Answer (“Ans.,” mailed Apr. 22, 2016) and Final Office Action (“Final Act.,” mailed June 8, 2015).

<sup>2</sup> According to the Appellants, the real party in interest is Target Brands, Inc. Appeal Br. 2.

STATEMENT OF THE CASE

The Appellants' invention is "directed to a knowledge base system that integrates with one or more ticketing systems." Spec. ¶ 25.

Claims 35, 46, and 49 are the independent claims on appeal. Claim 35 (Appeal Br. 28 (Claims App.)) is illustrative of the subject matter on appeal and is reproduced below (bracketing added for reference):

35. A computer-implemented method of utilizing a knowledge base containing stored information for a service ticketing system, comprising the steps of:

[(a)] using a ticketing application to generate a computer interface operable by a support technician to input data for creating a service ticket in response to a customer contact;

[(b)] displaying on the computer interface an identifier for a current knowledge base item containing stored information related to the service ticket wherein said identifier is viewable by a support technician;

[(c)] determining, by a computer, in response to a selection by the support technician of a knowledge link button displayed on the computer interface, whether or not said current knowledge base item related to said service ticket has been previously displayed on the computer interface for viewing by the support technician;

[(d)] upon a determination by said computer that the current knowledge base item has not been previously displayed on the computer interface for viewing by the support technician, displaying on said computer interface said identifier and a new-item graphical element and preventing the ticketing application from applying the current knowledge base item to the service ticket until said stored information has been displayed on said computer interface for viewing by said support technician; and,

[(e)] when said current knowledge base item has been previously displayed on the computer interface for viewing by the support technician, displaying on said computer interface said identifier and an apply-item graphical element and allowing

the ticketing application to apply the current knowledge base item to the service ticket.

### REJECTIONS<sup>3</sup>

Claims 35–54 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 3.

Claims 37–47 and 49–54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schneider (US 2008/0262860 A1, pub. Oct. 23, 2008) and Sattler (US 2006/0259272 A1, pub. Nov. 16, 2006). *Id.* at 7.

Claim 48 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schneider, Sattler, and Official Notice. *Id.* at 24.

### ANALYSIS

#### *Non-Statutory Subject Matter*<sup>4</sup>

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 588–89 (2013)).

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<sup>3</sup> We note that the rejection under 35 U.S.C. § 112, first paragraph, has been withdrawn by the Examiner. Advisory Action, mailed Sept. 17, 2015.

<sup>4</sup> The rejections are addressed in the order presented in the Final Action.

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 78–79 (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*, 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.* (citing *Mayo*, 566 U.S. at 79) (emphasis added). If so, the second step is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

In other words, the second step is to “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.’” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). 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. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea, and merely invoke generic processes and machinery, *i.e.*, “whether the focus of the claims is on [a] specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a

tool.” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

Under the first step of the *Mayo/Alice* framework, the Examiner looks to the language of the independent claims and determines that the claims are directed to “the abstract idea of *utilizing a knowledge base*,” a fundamental economic/business practice, method of organizing human activity, and idea of itself. Final Act. 3. The Appellants ostensibly do not contest that the claims are directed to utilizing a knowledge base, but argue that “there is no support for this assertion anywhere in this record.” Appeal Br. 24. We disagree.

The Specification provides that the invention is “directed to a knowledge base system that integrates with one or more ticketing systems,” i.e., helpdesks or support centers. Spec. ¶¶ 1, 25. The preamble of independent claim 35 provides for “[a] computer-implemented method of utilizing a knowledge base containing stored information for a service ticketing system,” and recites limitations of using an application to generate an interface, display identifier data on the interface, determine, in response to a selection of data, whether item data has been previously displayed, and based on the determination, display new and graphic data and prevent or allow the application to apply the item. Appeal Br. 28 (Claims App.). The preamble of independent claims 46 similarly provides for a system with a computer, interface, and memory “for utilizing a knowledge base containing stored information for a service ticketing system” to perform the functions of the method of claim 35 and the functions of retrieving date data and displaying data including the date. *Id.* at 30–31. And the preamble of independent claim 49 also provides for a program product “for utilizing a

knowledge base containing stored information . . . for a service ticketing system” to perform the functions of the method of claim 35 and the functions of generating a web page and forwarding the item data. *Id.* at 32–33. The dependent claims recite further limitations that define the data in the knowledge base, add functions of retrieving, accessing, storing, identifying, and displaying data, add further data in the system, and add a search component. *See id.* at 29–34. The limitations are performed by generic devices and computers. *See id.* ¶¶ 63–70.

In that context, considering the claims in light of the specification and on their “their character as a whole” (*Enfish*, 822 F.3d at 1335), the claims are directed to utilizing information in a knowledge base for a service ticketing, i.e. support center, system.<sup>5</sup> The claims are similar to those found to be abstract ideas by our reviewing court in *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (process of gathering and analyzing information of a specified content and displaying the result), *Intellectual Venture I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (“organizing, displaying, and manipulating data of particular documents”), and *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367, 1369 (Fed. Cir. 2015) (customizing web page content and budgeting using a communication medium). Here, the claims involve nothing more than generating an interface, determining and displaying data, and conditionally applying item data in the helpdesk/support

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<sup>5</sup> We note that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). The Board’s “slight revision of its abstract idea analysis does not impact the patentability analysis.” *Id.* at 1241.

center area, without any particular inventive technology — an abstract idea. *See Electric Power*, 830 F.3d at 1354.

We find unpersuasive the Appellants’ argument that the Examiner’s rejection is in error because “there is no evidence or case law cited in the Final Rejection dated June 8, 2015 that in any way supports an assertion that any pending claim is directed to an abstract idea within the meaning of Alice.” Appeal Br. 24; *see also* Reply Br. 8–9. The Examiner cites to the intrinsic evidence of the claim language in determining that the claims are directed to an abstract idea. *See* Final Act. 3. There is no requirement that Examiners must provide case law in every case before a conclusion can be made that a claim is directed to an abstract idea. Evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary, and is not necessary here. *See Mortgage Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016) (“[I]t is also possible, as numerous cases have recognized, that a § 101 analysis may sometimes be undertaken without resolving fact issues.”). And, as the Examiner notes (Ans. 10–11), the guidelines are not legal requirements. *Intellectual Ventures I LLC v. Erie Indemnity Co.*, No. 2017-1147, 2017 WL 5041460, at \*4 (Fed. Cir. 2017); *In re Fisher*, 421 F.3d 1365, 1372 (Fed. Cir. 2005) (“The MPEP and Guidelines ‘are not binding on this court’”) (internal citations omitted); MPEP, Foreword (“The Manual does not have the force of law or the force of the rules in Title 37 of the Code of Federal Regulations”); *and* 2014 Interim Eligibility Guidance at 74619 (“This Interim Eligibility Guidance does not constitute substantive rulemaking and does not have the force and effect of law . . . and is not intended to create any right or benefit, substantive or procedural, enforceable by any party



against the Office”). We decline to find error in the Examiner’s decision not to recite a judicial decision.

There is also no specific requirement that requires that each claim be examined individually by the Examiner (Appeal Br. 26) in determining that the claims are directed to an abstract idea. *See Alice*, 134 S. Ct. at 2355–57. We decline to find error in the Examiner’s decision not to recite each dependent claim limitation and address its patent-eligibility separately. The Examiner’s discussion in the Final Office Action appears under the heading “Claims 35–54 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.” Final Act. 3 (emphasis omitted). There is no indication that the Appellants were not put on notice of the Examiner’s rejection regarding the dependent claims or that the rejection otherwise failed to satisfy the requirements of 35 U.S.C. § 132.

We find unpersuasive the Appellants’ argument that the claimed invention is not directed to an abstract idea because “the claim is not a drafting effort to monopolize the abstract idea.” Reply Br. 9. Although monopolization, i.e., preemption, “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*Alice*, 134 S. Ct. at 2354 (quoting *Mayo*, 132 S. Ct. at 1293)), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 2511 (2016); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir.), *cert. denied*, 136 S. Ct. 701 (2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”)).

We also find unpersuasive the Appellants' argument that the claims are not directed to an abstract idea because, like *Enfish*, the claims are not merely directed to generic computer components performing an abstract idea but are directed to an improvement in computer functionality.<sup>6</sup> See Reply Br. 9–11. The claims at issue in *Enfish* were directed to a specific type of data structure, i.e., a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data. *Enfish*, 822 F.3d. at 1335–36. There, in rejecting a § 101 challenge, the court held that “the plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Id.* at 1336. The Appellants have not adequately explained here how the court's holding in *Enfish* impacts the present analysis under the *Mayo/Alice* framework. For example, the Appellants do not point to anything in the claims that resembles the inventive self-referential data structure at issue in *Enfish*. We also find nothing in the Appellants' Specification, nor do the Appellants direct us to anything in the Specification, to indicate that the invention provides an improvement in computer functionality.

Under the second step of the *Mayo/Alice* framework, we adopt and find supported the Examiner's determination that the claim limitations, taken individually or as an ordered combination, do not recite an inventive concept. See Final Act. 3–4 (citing to Spec. ¶¶ 63–70 that provides for the functions to be performed by generic devices/computers operating in their

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<sup>6</sup> The Appellants may present a new argument based on a recent relevant decision of either the Board or a federal court.

normal capacities). We are unpersuaded by the Appellants' arguments to the contrary. *See* Appeal Br. 25–26; Reply Br. 11–12.

In response to the Appellants' argument that the claims are patent-eligible under § 101 because they recite limitations that are novel and unobvious (Appeal Br. 25–26), an abstract idea does not transform into an inventive concept just because the prior art does not disclose or suggest it. *See Mayo*, 132 S. Ct. at 1304. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology*, 133 S. Ct. at 2117. Indeed, “[t]he ‘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 possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981); *see also Mayo*, 132 S. Ct. at 1304 (rejecting “the Government’s invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101”).

Based on the foregoing, we are not persuaded that the Examiner erred in rejecting claims 35–54 under 35 U.S.C. § 101, and we sustain the rejection.

### *Obviousness*

#### Claims 35, 46, and 49

The Appellants contend that the Examiner’s rejection of independent claims 35, 46, and 49 is in error because the prior art does not teach limitation (d) of claim 35, and similarly recited in claims 46 and 49, of displaying an identifier and graphic element and preventing the application

from applying the item to the service technician until stored information has been displayed. *See* Appeal Br. 9–11, 14–19. We disagree.

We find unpersuasive the Appellants’ arguments that Sattler does not teach preventing the application from applying the based item until stored information is displayed for viewing by the technician, as opposed to a user, i.e., customer, nor displaying the claimed data in response to a determination. Reply Br. 3–4; Appeal Br. 10–11. We find the Appellants’ arguments unpersuasive because the Appellants argue against each reference individually when the Examiner relies on the combination of the art for the cited limitation. *See* Final Act. 9–10; Ans. 4. The test for obviousness is not what any one reference would have suggested, but rather what the combined teachings of the references would have suggested to those of ordinary skill in the art. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981). “[O]ne cannot show non-obviousness by attacking references individually were, as here, the rejections are based on combinations of the references.” *Id.*

Here, the Examiner finds that Schneider discloses displaying, upon a determination that the base item has not been previously displayed for viewing by a support technician, the identifier and a new-item graphical element, as partially recited by the limitation. *Id.* at 9 (citing Schneider ¶ 50). The Examiner acknowledges that Schneider does not disclose preventing the application from applying the base item to the ticket until stored information has been displayed, and relies on Sattler for curing that deficiency. *Id.* at 9–10 (citing Sattler ¶¶ 23, 24, Fig. 2). Specifically, the Examiner finds that Sattler discloses that if notes, i.e., the current knowledge base item, are not reviewed, then the selection, i.e., application, step is bypassed, thereby preventing the application from applying the note to the

service ticket. Ans. 2–3. The Examiner determines it would have been obvious to one of skill in the art to incorporate Sattler’s teaching of preventing with Schneider’s system and method because doing so “would provide a manner for allowing the user to choose a note once it is reviewed (Sattler [0023]), thus aiding the client by providing an indication of whether a not resolves a problem.” *Id.* at 10.

We find unpersuasive the Appellants’ argument that Sattler does not teach preventing the application from applying the base item to the service ticket until the stored information is displayed. *See* Appeal Br. 9–10; Reply Br. 4. Sattler discloses a customer support application that identifies relevant notes to a question and, if no notes are found, the question is sent to a team to prepare a new solution. Sattler, Abstract. Identified notes are displayed to the user for selection. *Id.* ¶ 23. If a note is not selected, then the user may seek assistance from the developer and the remaining notes are eliminated. *Id.* Fig. 2, ¶ 23. The user can decide whether to not to review notes that might be solutions. *Id.* “If wizard receives an indication from the user interface 410 that user wishes to review the notes (170), the notes or a summary of the notes are output (172) via the user interface 410.” *Id.* ¶ 23. If the user chooses not to review the note (*id.* Fig. 2, “no” to step 170), the application performs statistical analyses (step 200), outputs a question (step 210), adds the answer to the ticket (step 220), and repeats the process beginning with comparing the ticket data with attributes (step 120). *Id.* Fig. 2. As such, we find supported the Examiner’s finding that Sattler discloses that if notes are not reviewed, then the selection step is bypassed, thereby preventing the application from applying the note (base item) to the service ticket until the note has been displayed.

Based on the foregoing, we are not persuaded that the Examiner erred in rejecting independent claims 35, 36, and 49 under 35 U.S.C. § 103, and we sustain the rejection.

Claims 36–41

The Appellants contend that the Examiner’s rejection of dependent claim 36 is in error because the prior art Schneider, upon which the Examiner relies, does not teach limitation of the knowledge base including a homepage, as recited in the claim. Appeal Br. 11; Reply Br. 5. We agree.

The Examiner cites paragraphs 40 and 41 and Figure 3 of Schneider for disclosing this limitation. Final Act. 10–11; Ans. 4. The cited portions of Schneider disclose a web page, i.e., an interface or homepage, of the business support application. However, the claim requires that the knowledge base contains stored information of a homepage, not that the application has a homepage. The Examiner has not adequately shown that the stored information includes the data of a homepage.

As such, we are persuaded that the Examiner erred in rejecting dependent claim 36 under 35 U.S.C. § 103, and we do not sustain the rejection. We also do not sustain the rejection of claims 37–41, which depend from claim 36 and rely on the same inadequately supported finding.

Claims 42 and 43

The Appellants contend that the Examiner’s rejection of dependent claim 42 is in error because the prior art Schneider, upon which the Examiner relies, does not teach limitation of retrieving and storing data from a ticketing database, as required by the claim. Appeal Br. 13; Reply Br. 7. We agree.

The Examiner cites paragraphs 39 through 42 of Schneider for disclosing this limitation. Final Act. 12; Ans. 6. The cited portions of Schneider disclose memory 164 at server 140 storing solved incident, FAQ, and update repositories 168, 172, and 176, in communication with business configuration repository 184 that includes static context information repository 186. Schneider ¶ 40, Fig. 1B. These repositories store and provide information. *Id.* ¶¶ 40, 41. However, the Examiner does not identify which repository meets the claimed ticketing database. The Examiner appears to find that the interface retrieves data from the repositories (Final Act. 12), but does not indicate that the interface stores data as well. The Examiner has not adequately explained what component or how Schneider discloses storing data from a database.

As such, we are persuaded that the Examiner erred in rejecting dependent claim 42 under 35 U.S.C. § 103, and we do not sustain the rejection. We also do not sustain the rejection of claim 43, which depends from claim 42 and relies on the same inadequately supported finding.

Claims 44, 45, 47, 48, and 50–54

The Appellants contend that the Examiner's rejections of dependent claims 44, 45, 47, 48, and 50–54 are in error for the same reasons as set forth with respect to claims 35, 46, and 49. *See* Appeal Br. 14, 16, 17, 19, 20. Because we find not persuaded of error in the Examiner's rejection of the independent claims, we sustain the rejection of the dependent claims 44, 45, 47, 48, and 50–54 for the same reasons we sustain the rejection of independent claims 36, 46, and 49.

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DECISION

The Examiner's rejection of claims 35–54 under 35 U.S.C. § 101 is AFFIRMED.

The Examiner's rejections of claims 35 and 44–54 under 35 U.S.C. § 103(a) are AFFIRMED.

The Examiner's rejection of claims 36–43 under 35 U.S.C. § 103(a) is REVERSED.

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