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ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

EXAMINER
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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* YORAM MERIAZ, RAN MERIAZ, and  
ALEX TKACHMAN

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Appeal 2016-008011  
Application 12/559,780  
Technology Center 3600

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Before JOHN A. JEFFERY, BRUCE R. WINSOR, and  
JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellants<sup>1</sup> appeal from the Examiner's decision to reject claim 1–32. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants identify the real party in interest as MBTE Holdings Sweden AB. App. Br. 1.

### CLAIMED SUBJECT MATTER

Appellants' invention relates to "sponsoring content to incentivize others to promote the content." Spec. ¶ 3. Claim 1 is representative and reproduced below:

1. An advertising promotion computer system comprising:
  - a facilitator computer system, the facilitator computer system comprising one or more memory storage areas and one or more processors, the facilitator computer system being configured to:
    - receive a sponsorship request to sponsor a content item for distribution, the (a) content item (i) accessible using a first uniform resource identifier and (ii) viewable via an interface and (b) sponsorship request originating from a sponsor computing device;
    - receive a distribution request to distribute the sponsored content item, the distribution request being associated with a distributor account and originating from a distributor computing device;
    - generate a distribution link for distributing the sponsored content item, the distribution link (a) comprising a second uniform resource identifier and (b) being configured for generating a sponsored content request that identifies the sponsored content item and the distributor account;
    - receive a sponsored content request originating from a viewer computing device, the sponsored content request being generated based at least in part on the distribution link comprising the second uniform resource identifier;
    - identify the sponsored content item associated with the sponsored content request based at least in part on the distribution link comprising the second uniform resource identifier;
    - redirect the viewer computing device to the sponsored content item using the first uniform resource identifier;
    - uniquely identify the distributor account associated with the distribution link comprising the second uniform resource identifier; and

provide an incentive credit to the distributor account for the sponsored content request that is generated based at least in part on the distribution link.

#### REJECTION<sup>2</sup>

Claims 1–32 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 2–5.

#### FINDINGS AND CONTENTIONS

The Examiner finds Appellants’ claims are similar to the claims in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (2014), which our reviewing court found claimed merely an abstract idea. Ans. 3. According to the Examiner, “[Appellants’] invention falls under the abstract idea of certain methods of organizing human activity because it relates to the concepts of advertising, marketing and sales activity or behavior.” *Id.* at 2 (citing *July 2015 Update on Subject Matter Eligibility*, 80 Fed. Reg. 45429 (July 30, 2015)).

The Examiner adds that the “claim element(s) individually or in combination do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself.” *Id.* at 7. According to the Examiner, contrary to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (2014), Appellants’ “claims do not specify how the internet is manipulated to yield a desired result.” Ans. 5.

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<sup>2</sup> The rejection is under the provisions of 35 U.S.C. in effect before the effective date of the Leahy-Smith America Invents Act of 2011 (pre-AIA). *See, e.g.*, Final Act 2.

Appellants argue that the claimed invention is not directed to an abstract idea because the Supreme Court did not state that *all* methods of organizing human activities are abstract ideas, as reflected in a guidance material of the United States Patent and Trademark Office (USPTO) that identifies only “*certain* methods of organizing human activities” as abstract. App. Br. 5–7 (citing *Bilski v. Kappos*, 561 U.S. 593, 611 (2010)); *id.* at 7 (citing *2014 Interim Guidance on Patent Subject Matter Eligibility*, 79 Fed. Reg. 74618, 74621–22 (Dec. 16, 2014)).

Appellants further argue, even if the claims are directed to an abstract idea, then similar to the claims in *DDR Holdings*, Appellants’ claims are directed to overcoming a problem specifically arising in the realm of computer technology. App. Br. 22. According to Appellants, the claims “are directed to generating and distributing sponsored content using unique uniform resource identifiers.” *Id.* Appellants add that software concepts are not necessarily abstract (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). Reply Br. 2.

#### ISSUE

Appellants rely on the arguments made for claim 1 to argue the patentability of the remaining pending claims. *See generally* App. Br. 4–24; Reply Br. 1–15. Therefore, we select claim 1 as the representative claim, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(iv) (2015). Claims 2–32 stand or fall with claim 1.

The issue presented by Appellants’ arguments is whether the Examiner erred in concluding claim 1 is directed to ineligible subject matter under § 101. This issue turns on whether claim 1 is directed to an abstract

idea under the analysis set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), and *Alice Corp. Party Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014).

#### ANALYSIS

To be statutorily patentable under 35 U.S.C. § 101, the subject matter of an invention must be a “new and useful process, machine, manufacture, or composition of matter, or [a] new and useful improvement thereof.”

35 U.S.C. § 101. The Supreme Court has held there are implicit exceptions to the categories of patentable subject matter identified in § 101, including (1) laws of nature, (2) natural phenomena, and (3) abstract ideas. *Alice*, 134 S. Ct. at 2355. Further, the Court has “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.” *Id.* (citing *Mayo*, 566 U.S. 66). The evaluation follows the two-part analysis set forth in *Mayo*: 1) determine whether the claim is directed to an abstract idea; and 2) if the claim is directed to an abstract idea, determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. *See Alice*, 134 S. Ct. at 2355.

Claim 1 is directed to a process, which is one of the four statutory classes. Following the Court’s guidance, we turn to the first step of the *Mayo/Alice* analysis to determine if the claim is directed to one of the judicial exceptions, i.e., an abstract idea. According to *Alice* step one, “[w]e must first determine whether the claims at issue are *directed to a patent-ineligible concept*,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355

(emphasis added). “[T]he ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish*, 822 F.3d at 1335 (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

The Specification provides evidence as to what the invention is directed to. In this case, the Specification discloses that a goal of the claimed invention is to motivate, incentivize, and compensate parties to create, distribute, and host content on their systems. Spec. ¶ 2. According to the Specification, “[t]he term ‘content’ may refer to any page, document, picture, music, review, video, book, information, and/or the like that is accessible via the Internet (e.g., also referred to as web content).” *Id.* ¶ 30. According to the Specification, Appellants’ invention allegedly achieves the goal by proposing a system that receives registration requests from various parties/entities for creating, sponsoring, hosting, and distributing the content using links. *Id.* ¶ 21. Upon an accessing party’s selection of one of the links, the system provides an incentive to the creator, host, and distributor; and redirects the accessing party to the content. *Id.*

Here, claim 1 recites five distinct steps—(1) receive a sponsorship request to sponsor a content item accessible using a first identifier, (2) generate a distribution link for distributing the sponsored content item using a second identifier, (3) receive a distribution request to distribute the sponsored content item, (4) receive a sponsored content request from a viewer computing device, and (5) redirect the viewer computing device to the sponsored content item and provide an incentive credit to the distributor.

The Examiner finds Appellants' invention falls under the abstract idea of a method of organizing human activity because it relates to the concepts of advertising, marketing and sales activity. Ans. 2–3. In particular, the Examiner explains:

[Appellants'] invention provides an incentive (e.g., reward, cash or compensation, etc.) to the account of the distributor in exchange for distributing (akin to advertising, marketing and sales activity or behavior) the sponsored content (akin to advertising and marketing) requested (akin to advertising, marketing and sales activity or behavior) by one or more users or viewers.

*Id.* at 3. We agree with the Examiner's analysis that the claimed method of organizing human activity is abstract inasmuch as it relates to advertising, marketing, and sales activity.

Appellants attempt to analogize the claimed invention to the claims in *DDR Holdings*, asserting the claimed invention is directed to significantly more than an abstract idea is unavailing. App. Br. 22. In *DDR Holdings*, the Federal Circuit determined that the claims addressed the problem of retaining website visitors who, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be transported instantly away from a host's website after clicking on an advertisement and activating a hyperlink. *DDR Holdings*, 773 F.3d at 1257. The Federal Circuit further determined that the claims "specify how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink." *Id.* at 1258. The Federal Circuit, thus, held that the claims were directed to eligible subject matter because they claim a solution "necessarily



rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.* at 1257.

We find Appellants’ claim 1 more akin to the claims in *Ultramercial* than those in *DDR Holdings*. Our reviewing court in *DDR Holdings* cautioned that

not all claims purporting to address Internet-centric challenges are eligible for patent. For example, in our recently-decided *Ultramercial* opinion, the patentee argued that its claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” 772 F.3d at 1264. But this alone could not render its claims patent-eligible. In particular, we found the claims to merely recite 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.* at 1265.

*DDR Holdings*, 773 F.3d at 1258. *See Smart Sys. Innovations, LLC v. Chi. Transit Auth.*, 873 F.3d 1364, 1375 (Fed. Cir. 2017) (“*DDR Holdings* does not apply when . . . the asserted claims do not ‘attempt to solve a challenge particular to the Internet.’” (quoting *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016))).

Contrary to Appellants’ arguments, Appellants’ claim 1 does not attempt to solve a challenge particular to the Internet as do the claims in *DDR Holdings*. Appellants argue the claims overcome a problem specifically arising in computer technology by distributing sponsored content using “unique uniform resource identifiers.” App. Br. 22. But redirecting using uniform resource locators (URLs) is a conventional known practice on the Internet. And motivating, incentivizing, and compensating

parties to create, distribute, and host content (as discussed above) using the redirection of URLs is not a challenge particular to the Internet, but is instead “merely the routine or conventional use of the Internet.” *DDR Holdings*, 773 F.3d at 1259.

Similar to the claims in *Ultramercial*, Appellants’ claim 1 merely recites the abstract idea of advertising, marketing, and sales activity along with routine additional steps such as receiving requests involving a content item, generating a link, redirecting to the content item, and use of the Internet. Thus, Appellants’ claim 1 “simply instruct[s] the practitioner to implement the abstract idea with routine, conventional activity.” *Ultramercial*, 772 F.3d at 715.

Appellants’ argument in the Appeal Brief that the claims “do not preempt every application of an idea and provide a specific way to solve the problem that specifically arises in the realm of computer technology” is unpersuasive because it does not alter our § 101 analysis. *See* App. Br. 22. Preemption concerns are fully addressed and made moot where a claim is deemed to disclose patent ineligible subject matter under the two-part framework described in *Alice. Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Therefore, we are not persuaded that the Examiner erred in rejecting claim 1, and claims 2–32 not argued separately with particularity.

#### CONCLUSION

The Examiner did not err in rejecting claims 1–32 under § 101.

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Application 12/559,780

DECISION

For the above reasons, we affirm the Examiner's decision to reject claims 1–32 under § 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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED