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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* DILIP VARADARAJAN, NAOKI OGISHI,  
BALAJI THALLAM PARTHASARATHY,  
BIN GONG, and DANNY CHANG<sup>1</sup>

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Appeal 2016-008219  
Application 14/040,149  
Technology Center 3600

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Before JOHN A. EVANS, KARA L. SZPONDOWSKI, and  
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> This paper is captioned by inventor name according to our pre-AIA convention. The Applicant/Appellant and real party in interest is eBay, Inc. (*See App. Br. 2.*)

## STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 2–6, 8–12, and 14–18, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## THE INVENTION

The application is directed to “a method and system to request supplemental trust information (STI), from over a network, from a third party trust provider.” (Abstract.) Claim 2, reproduced below, exemplifies the subject matter on appeal:

2. A machine-implemented method comprising:

comparing a criterion from an item listing that describes an item and a corresponding data field from supplemental independent information, the supplemental independent information provided by a third party, wherein the item listing is at a network-based marketplace, wherein the network-based marketplace includes a listing management application to provide an a [*sic*] listing authorship service, and wherein a seller is a client of the network-based marketplace that is responsible for the item listing via the listing management application;

determining that the criterion and the corresponding data field do not match; and

noting an item misrepresentation for the item listing in response to the determination that the criterion and the data field do not match.

## THE REJECTION

Claims 2–6, 8–12, and 14–18 stand rejected under 35 U.S.C. § 101 “because the claimed invention is directed to non-statutory subject matter.” (Final Act. 4.)

## ANALYSIS

The Examiner finds the claims “directed to presenting item information which is considered to be an abstract idea inasmuch as such activity is considered both a fundamental economic practice and a method of organizing human activity.” (Final Act. 4–5.) The Examiner further finds the claim elements “when taken in combination, together do not offer substantially more than the sum of the functions of the elements when each is taken alone.” (*Id.* at 5.) The Examiner explains that “[t]he claims only manipulate abstract data elements” and that “[t]aking the elements both individually and as a combination, the computer components at each step of the . . . process perform purely generic computer functions.” (Ans. 4.)

Appellant argues (1) “the rejections are impermissibly based on the Examiner’s opinion” which “is not substantial evidence needed to support such a rejection, but rather an arbitrary and capricious decision that warrants reversal” (App. Br. 8); (2) “the Examiner failed to follow the Office’s guidance in selecting a court case similar to the present claims needed to maintain such rejections” (*id.*); (3) “the novelty of the claims precludes the conclusion that they are directed to a ‘fundamental economic activity,’ and because the claims “are directed to automatically modifying a work of authorship, they do not organize human activity” (*id.* at 9); and (4) “the Examiner was again conclusory in asserting that the other elements of the

claim do not offer significantly more than the alleged abstract idea” such that “Appellant has been deprived of a reasoned basis by which to assess the accuracy of the Examiner’s statements” (*id.*).

We agree with and adopt the Examiner’s findings and the conclusion that the claims are directed to unpatentable subject matter.

Claim 1 is directed a method that compares a criterion from an item listing to corresponding data from “supplemental independent information,” determin[es] whether the information matches, and, in the case of a non-match, “not[es] an item misrepresentation.” Essentially, the claimed system compares information about an item with information from another source to identify inaccuracies. We agree that this claim is directed to the abstract concept of “presenting item information,” in particular, errors or inconsistencies in an item description, and further observe that the abstract idea is implemented in the claims as a set of data gathering and manipulating steps of the type that have been deemed abstract by the courts, including in *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 Fed. Appx. 950, 954–55 (Fed. Cir. 2014), cited by the Examiner.

Appellant’s argument (1) is not persuasive because the USPTO carries its procedural burden when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (brackets in original, quoting 35 U.S.C. § 132). Here, the Examiner notified Appellant that the claims are directed to an ineligible abstract idea, specifically, to the idea of “presenting item information,” and that “[t]he elements of the instant process, when

taken in combination, together do not offer substantially more than the sum of the functions of the elements when each is taken alone.” (Final Act. 4–5.) Thus, Appellant has been notified of the reasons for the rejection with such information “as may be useful in judging of the propriety of continuing the prosecution of [the] application,” which is all that is required from a procedural perspective. Appellant does not persuasively explain why the Examiner’s identification of the idea is incorrect, or why the identified idea is not abstract.

Appellant’s argument (2) is not sufficient to show Examiner error because the guidelines are not legal requirements. *See* 79 Fed. Reg. 74,619 (“This Interim Eligibility Guidance has been developed as a matter of internal Office management and is not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office. Rejections will continue to be based upon the substantive law, and it is these rejections that are appealable. Failure of Office personnel to follow this Interim Eligibility Guidance is not, in itself, a proper basis for either an appeal or a petition.”); *cf. In re Fisher*, 421 F.3d 1365, 1372 (Fed. Cir. 2005) (“The MPEP and Guidelines are not binding on this court.”).

Appellant’s argument (3) is not persuasive because “a claim for a new abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). Appellant’s assertion that the claims “are directed to automatically modifying a work of authorship” is unavailing because such limitations are not found in the claims and because Appellant fails to explain why, even if the claims were so limited, such a limitation would make the claims sufficiently concrete.

Finally, regarding Appellant's argument (4), we do not agree that the Examiner's finding that the claims lack "significantly more" was conclusory. Aside from the "comparing," "determining," and "noting," the claims merely identify the source of the supplemental information, place the listing in a network-based marketplace that includes a listing management application, and state that the seller is a client of the marketplace. We fail to see, and Appellant does not explain, how any of those additional claim recitations, alone or in combination, would amount to an inventive step.

Because Appellant does not persuade us the Examiner erred in rejecting the claims under Section 101, the rejection is sustained.

#### DECISION

The rejection of claims 2–6, 8–12, and 14–18 under 35 U.S.C. § 101 is affirmed.

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