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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* JEFFREY LOUI, DAVID VOGT  
JARED KAPLAN, and TONY LAM

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Appeal 2016-008713  
Application 14/100,191  
Technology Center 3600

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Before ST. JOHN COURTENAY III, THU A. DANG, and JOYCE CRAIG,  
*Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 2–13, which constitute all claims pending in the application. Claim 1 has been previously canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Appellants identify eBay Inc. as the real party in interest. App. Br. 2.

## STATEMENT OF THE CASE

According to Appellants, the claimed invention relates to “a system to display information related to items associated with a network-based marketplace.” Spec. ¶ 2. Claim 2, illustrative of the invention and the subject matter of the appeal, reads as follows:

2. A computer-implemented method, comprising:
  - identifying, using one or more processors, at least one item offered for sale by a seller in a network-based marketplace, the item associated with a listing and a first set of information describing the listing;
    - based at least on the first set of information, generating, using one or more processors, a second set of information to supplement the first set of information, wherein the second set of information comprises information at least related to the item and further comprises information related to the seller of the item;
    - generating, using one or more processors, one or more multimedia programs, the one or more multimedia programs comprising at least some of the second set of information, and including snippets relating to the item and the seller of the item;
    - pushing, using one or more processors, the second set of information to at least one user in the network-based marketplace;
    - enabling the user to make a purchase request for the item for sale using the second set of information, and
    - receiving the purchase request for the item for sale from the user.

*The Rejections on Appeal*

1. Claims 2–13 stand rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1–5 and 7–15 of U.S. Patent No. 8,700,491. Ans. 3.
2. Claims 2–13 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. *Id.*
3. Claim 13 stands rejected under pre-AIA 35 U.S.C. § 112, second paragraph. *Id.* at 5.

ISSUES

The principal issue before us is whether the Examiner erred in concluding that the claimed “computer-implemented method” that comprises the steps of “identifying,” “generating,” “pushing,” “enabling the user to make a . . . request for,” and “receiving” various information/data (claim 2) is directed to patent ineligible subject matter.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments presented in this appeal. Arguments which Appellants could have made, but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015). On the record before us, we are not persuaded the Examiner has erred. We adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner’s Answer, and highlight and provide the following for emphasis.

*Rejection Under Nonstatutory Double Patenting*

Appellants merely state that “[t]he remaining rejection under *Non-Statutory Double Patenting* will be address by the filing of appropriate Terminal Disclaimers if this Appeal is upheld.” App. Br. 8. Because Appellants do not substantively challenge this rejection, we summarily sustain it.

*Rejection Under 35 U.S.C. § 112 (Second Paragraph)*

Appellants merely contend that claim 13 “will be formally corrected by the filing of an amendment post Appeal.” App. Br. 8. Because Appellants do not substantively challenge the rejection of claim 13 under 35 U.S.C. § 112, we summarily sustain it.

*Rejection Under 35 U.S.C. § 101*

Appellants argue the Examiner erred in concluding the claims constitute patent ineligible subject matter. App. Br. 8–19. In particular, although Appellants do not contest the Examiner’s legal conclusion that the claims are directed to an abstract idea under step one of *Alice*, Appellants contend that, under step two, “the relevance and functionality of the claimed subject matter is respectfully ‘significantly more’ than the prior art and also provides an ‘inventive concept’ under the *Alice* case.” *Id.* at 11; *see Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). In particular, Appellants contend, “[t]he technical problem is ubiquity of indistinct (first) content on the internet” wherein “[t]he business and technical solution is to provide distinguishing supplemental (second) information.” App. Br. 11. According to Appellants, “a distinct and specific stream of second information, separate from the first information, is sent to a user.” *Id.* at 12 (emphasis omitted). Appellants refer to a prior PTAB

Decision, CBM2015-00167,<sup>2</sup> and contend that, for similar reasons here, the Examiner “has over-simplified the claims,” and “has not reviewed them as an ordered combination” to determine whether additional elements in the claims “transform the nature of the claims into a patent-eligible application.” *Id.* at 15–16 (emphasis omitted).

Appellants draw the Board’s attention to dependent claim 11 depending from claim 2, which recites “pushing the second set of information to the at least one user based on a detection that the at least one user is signed in to the network-based marketplace.” *Id.* at 16 (citing claim 11, emphasis omitted). According to Appellants, “the claim is eligible because it recites additional limitations that when considered as an ordered combination demonstrates a technologically rooted solution to an Internet-centric problem” and thus “amounts to significantly more than merely facilitating a purchase.” *Id.* at 17. Appellants also direct the Board’s attention to *DDR Holdings*, because, in Appellants’ invention, “when a user comes online in the present case (per claim 11), he or she is connected to a data source that, like a stock alert, provides ‘live’ first and second information relating to item listings that are specifically tailored, again like a ‘stock alert’, to ‘seller’ information as well as to the stock value itself.” *Id.* at 18 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014)). That is, “the instant claims, like the claims of *DDR Holdings*, present a technical solution necessarily rooted in computer technology.” *Id.* at 19.

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<sup>2</sup> *NRT Tech. Corp. v. Everi Payments, Inc.*, CBM2015-00167 (PTAB Jan. 22, 2016) (Paper 14).

Based on the record before us, we are not persuaded by Appellants' contention that the Examiner erred in concluding that the claims are directed to patent ineligible subject matter.

As Appellants acknowledge, under 35 U.S.C. § 101, the Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (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 is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea, as the Examiner concludes in this case. *Id.* If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

In the present application, we agree with the Examiner that “[t]he claims are directed to the abstract idea of facilitating a purchase.” Final Rejection 4. According to the Examiner, “[t]he concept of ‘facilitating a purchase’ 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 by providing an opportunity for parties to enter into a contractual relationship.” *Id.* We note that Appellants do not dispute the claims are directed to an abstract idea, under step one of *Alice*. App. Br.

11. On this record, we find no error with the Examiner’s legal conclusion the claims are directed to an abstract idea under step one of *Alice*.

As to *Alice* step two, although Appellants contend “the relevance and functionality of the claimed subject matter is respectfully ‘significantly more’ than the prior art and also provides an ‘inventive concept’ under the *Alice* case” (App. Br. 11), because the claims, and in particular claim 2, is directed to of “identifying,” “generating,” “pushing,” “enabling the user to make a . . . request for,” and “receiving” various information/data, “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 134 S. Ct. at 2359. In this case, the Examiner concludes, and we agree, “[v]iewed as a whole, Applicant’s method claims simply convey the abstract idea itself applied on some generic computer.” Ans.7.

That is, we agree that these limitations are all generic computer functions (i.e., “identifying,” “generating,” “pushing,” “enabling” the request of, and “receiving” of data) that are well-understood, routine, and conventional activities previous known to the industry. *Alice*, 134 S. Ct. at 2359. Although Appellants contend that the claims require “pushing the second set of information to the at least one user based on a detection that the at least one user is signed in to the network-based marketplace” (App. Br. 16 (citing claim 11, emphasis omitted)), such pushing of particular data in a particular manner does not add meaningful limitations to the idea of facilitating a purchase beyond generally linking the method to a particular technological environment. Here, the claimed pushing of information uses “processors” as tools in their ordinary capacity to receive, generate and transfer information.

Furthermore, *DDR Holdings* does not help Appellants. In *DDR Holdings*, the Federal Circuit determined that certain claims satisfied *Mayo/Alice* step two because “the claimed solution amount[ed] to an inventive concept for resolving [a] particular Internet-centric problem,” i.e., a challenge unique to the Internet. *DDR Holdings*, 773 F.3d at 1257–59; see *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (noting that “[i]n *DDR Holdings*, we held that claims ‘directed to systems and methods of generating a composite web page that combines certain visual elements of a ‘host’ website with content of a third-party merchant’ contained the requisite inventive concept”). The Federal Circuit explained that the patent-eligible claims specified “how interactions with the Internet are manipulated to yield a desired result . . . that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258. The court reasoned that those claims recited a technological solution “necessarily rooted in computer technology” that addressed a “problem specifically arising in the realm of computer networks.” *Id.* at 1257.

The claims here do not address a similar problem and do not contain a similar inventive concept as the patent-eligible claims in *DDR Holdings*. Instead, as the Examiner points out, “[t]he claims are directed to the abstract idea of facilitating a purchase” (Final Rejection 4), wherein “[v]iewed as a whole, Applicant’s method claims simply convey the abstract idea itself applied on some generic computer.” Ans.7.

For at least the aforementioned reasons, on this record, we sustain the patent-ineligible subject matter rejection under 35 U.S.C. § 101 of claim 2 and claims 3–13 falling therewith.

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DECISION

We affirm the Examiner's rejections of claims 2–13 under 35 U.S.C. § 101 and under the judicially created doctrine of nonstatutory double patenting, and the rejection of claim 13 under 35 U.S.C. § 112.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED