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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* KEVIN EDWARD ANTHONY

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Appeal 2017-001181  
Application 14/258,705<sup>1</sup>  
Technology Center 3600

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Before TERRENCE W. McMILLIN, KARA L. SZPONDOWSKI, and  
SCOTT B. HOWARD, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1–6, 8–11, 13–15, 17–19, 21, and 22. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Appellant Kevin Edward Anthony is the real party in interest. App. Br. 2.

### THE CLAIMED INVENTION

The present invention relates generally to “the field of advertising,” and more particularly to “apparatuses, systems and methods for interactive multimedia placement.” Spec. ¶ 2. Independent claim 1 is directed to a system; independent claim 9 is directed to a user device; independent claim 13 is directed to a display device; and independent claim 17 is directed to a method. App. Br. 14, 16–18.

Claim 1, reproduced below, is representative of the claimed subject matter:

1. A system configured to provide interactive multimedia placement, the system comprising:

a user device configured to receive an input from a user through a user interface; and

a display configured to receive a modified media file and a combinable media, and display the modified media file and the combinable media,

wherein the input is processed by identifying a media file of the user and the combinable media, modifying the media file to produce the modified media file such that the modified media file is configured to be integrated with the combinable media, and transmitting the modified media file and the combinable media,

wherein the display displays the modified media file and the combinable media based on at least one from among a proximity of the user device to the display, an amount paid by a user through the user device, a quality value of a task completed by the user through the user device, a count value of a total number of a plurality of tasks completed by the user through the user device, a priority of the user, and a rank of the modified media file and the combinable media determined by other users.

## REJECTIONS ON APPEAL

Claims 1–6, 8–11, 13–15, 17–19, 21, and 22 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 2.

Claims 1–4, 6, 8, 9, 11, 13, 15, 17–19, 21, and 22 stand rejected under 35 U.S.C. § 102(a)(1) as being anticipated by Currans et al. (US 2003/0177063 A1, published Sept. 18, 2003) (“Currans”). Final Act. 5.<sup>2</sup>

Claims 5, 10, and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Currans and McDonough et al. (US 8,397,253 B2, issued Mar. 12, 2013) (“McDonough”). Final Act. 11.

## ANALYSIS

### *35 U.S.C. § 101 Rejections*

*Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under 35 U.S.C. § 101. In the first step, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 134 S. Ct. at 2355.

The Examiner concludes the claims are directed to “interactive media placement,” which is considered to be the abstract idea of “organizing human activities” and “a fundamental economic practice.” Final Act. 2–3.

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<sup>2</sup> The Examiner’s statement of rejection states that claims 1–4, 6–9, 11–13, and 15–22 stand rejected, but claims 7, 12, 16, and 20 have been canceled and there are no pending rejections for them. This is a harmless error.

Appellant argues that the “claimed invention results in an output of a consumable, commercial advertising medium which is tangible and in fact not Abstract.” App. Br. 8.

We are not persuaded by Appellant’s arguments. Here, the claims are directed to receiving a user input, processing the input by identifying a media file and combinable media, modifying the media file to be integrated with the combinable media, transmitting the modified media file and combinable media, and displaying the modified media file and combinable media based on at least one of a variety of considerations such as the proximity of the user device to the display. We agree with the Examiner that the claims are directed to the abstract ideas of “organizing human activities” (providing interactive multimedia placement by identifying a media file and combinable media, modifying the media file to integrate with the combinable media, transmitting the modified media file and combinable media, and displaying the modified media file and combinable media) and “a fundamental economic practice” (the placement of the advertisement based on a variety of factors including a proximity of the user device to the display). Final Act. 3.

The claims display an advertisement along with the delivery of free content (displaying modified media and combinable media, manipulating and reorganizing data to *personalize advertisements*). See *Ulramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (“Although certain additional limitations, such as consulting an activity log, add a degree of particularity, the concept embodied by the majority of the limitations describes only the abstract idea of showing an advertisement before delivering free content.”); see also *Intellectual Ventures I LLC v. Capital*

*One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (customizing information and presenting it to users based on particular characteristics). Moreover, the claims involve receiving, storing, analyzing (receiving input and processing it by identifying a media file and combinable media, *manipulating and reorganizing data* to personalize advertisements), and displaying data, activities that fit squarely within the realm of abstract ideas. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (“collecting information, analyzing it, and displaying certain results of the collection and analysis,” and “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category.”).

Our reviewing court has found that if a method can be performed by human thought or pen and paper (identifying and modifying media file and combinable media and then displaying the media file and combinable media, manipulating and reorganizing data to personalize advertisements), these processes remain unpatentable even when automated to reduce burden to the user. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*, [409 U.S. 63 (1972)].”). Therefore, Appellant has not adequately shown the claims are not directed to an abstract idea.

In the second step of *Alice*, we “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.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1297-1298 (2012)). 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.* (quoting *Mayo*, 132 S. Ct. at 1294).

Appellant argues the claimed elements add significantly more to the alleged abstract idea. *See* App. Br. 8–9. Specifically, Appellant argues the claimed invention “is necessarily rooted in digital advertising via computer networked devices and computer network technology in order to overcome a problem specifically arising in the realm of personalized digital advertisement content and thus making contents more appealing and resonating to its viewer.” App. Br. 8–9. We are not persuaded by Appellant’s argument and agree with the Examiner’s findings and conclusion that “[i]mproving the personalization of digital advertisements is not an improvement to the computer itself, but rather an improvement to the output of the computer,” and that the functioning of the computer has not been improved nor has the processor’s generation of output been improved. Ans. 3–4. Appellant has not adequately explained how or provided persuasive evidence to show why the claims are performed such that they are not routine and conventional functions of a generic computer. *See* Spec. ¶ 15 (describing a “display”); Spec. ¶ 49 (describing a “user device” as, *inter alia*, “any one of a number of modern computing devices which includes but is not limited to personal computers, tablet computers, and smart phone devices”).

The claims are distinguishable from those in *DDR*. In *DDR*, the Federal Circuit found that the challenged claims were valid because they “specif[ied] how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional” aspects of the technology. *DDR*, 773 F.3d at 1258–59. Here, we do not discern that these claims “stand apart,” like those in *DDR* because they merely recite the performance of a business practice known from the pre-Internet world (personalizing advertising content), along with the requirement to perform it on the Internet. *See DDR*, 773 F.3d at 1257. In other words, Appellant has not demonstrated their claimed generic computer components (e.g. user device, display, controller, transmitter) are able in combination to *perform functions that are not merely generic*, as the claims in *DDR*.

The claims, when viewed as a whole, perform conventional processing functions that courts have routinely found insignificant to transform an abstract idea into a patent-eligible invention. As such, the claims amount to nothing significantly more than an instruction to implement the abstract idea on a generic computer — which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 1–6, 8–11, 13–15, 17–19, 21, and 22.

*35 U.S.C. § 102 Rejection*

*Claims 1–4, 6, 8, 9, 11, 13, 15, 17–19, 21, and 22*

Claim 1 recites “wherein the display *displays the modified media file and the combinable media based on at least one from among a proximity of*



*the user device to the display*, an amount paid by a user through the user device, a quality value of a task completed by the user through the user device, a count value of a total number of a plurality of tasks completed by the user through the user device, a priority of the user, and a rank of the modified media file and the combinable media determined by other users.” Appeal Br. 14 (Claims App.) (emphasis added).

The Examiner finds Currans describes “using the geographic proximity of a significant image to (proximity of the user device to the display) to determine which image is used in the combinable media,” and that this teaching of a user’s relation to the image geographically describes that the “proximity of the user to the image (display) determines which media is displayed.” Ans. 4 (citing Currans ¶¶ 14, 16); *see also* Final Act. 5 (citing Currans ¶¶ 14, 16).

Appellant contends that Currans indicates what a selected image may be related to, but does not describe the claimed “display[ing] the modified media file and the combinable media.” App. Br. 11–12. Specifically, Appellant argues Currans’ inserting a person, building, or landmark that is “geographically relevant” to the media does not describe “[*which*] person/submission is most relevant to the viewing audience for engagement purposes.” Reply Br. 8 (citing Currans ¶ 11).

We are not persuaded by Appellant’s arguments. Claim 1 does *not* recite displaying media files based on “[*which*] person/submission is most relevant to the viewing audience for engagement purposes.” *See* Reply Br. 8 (emphasis omitted). Rather, the claim recites simply displaying media files “based on . . . a proximity of the user device to the display.” Appeal Br. 14 (Claims App.). Appellant does not direct us to any disclosure in Appellant’s

Specification providing any limiting definition for a proximity of the user device upon which the display is based. We find the scope of this limitation, when read in light of paragraph 50 of Appellant’s Specification (detailing an example including “the user may *select an image . . . they would like integrated and sent to all small displays within their proximity.*”), encompasses selecting an image based on geography related to the user. Spec. ¶50 (emphasis added).

As cited by the Examiner (Final Act. 5; *see also* Ans. 4), Currans discloses “an image is selected (**104**) for the at least one individual, such as . . . a geographically significant image.” Currans ¶ 14. Currans further discloses “the image associated with the user may be related to the user geographically.” Currans ¶ 16. In other words, Currans describes an image is selected *based on geographic significance or relation to the user geographically*. Appellant has not provided persuasive argument or evidence that the claimed displaying media files based on proximity of the user device to the display is not described by Curran’s selecting an image based on geographic relation to the user.

Accordingly, we sustain the 35 U.S.C. § 102 rejection of independent claim 1, as well as the rejections of independent claims 9, 13, and 17, which have limitations commensurate in scope with claim 1, and dependent claims 2–4, 6, 8, 11, 15, 18, 19, 21, and 22, not separately argued. *See* App. Br. 12.

*35 U.S.C. § 103 Rejection*

*Claims 5, 10, and 14*

Appellant has provided no separate arguments towards patentability for claims 5, 10, and 14. Therefore, the Examiner's section 103 rejection of claims 5, 10, and 14 is sustained for similar reasons as noted *supra*.

DECISION

The Examiner's rejection of claims 1–6, 8–11, 13–15, 17–19, 21, and 22 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1–4, 6, 8, 9, 11, 13, 15, 17–19, 21, and 22 under 35 U.S.C. § 102(a)(1) is affirmed.

The Examiner's rejection of claims 5, 10, and 14 under 35 U.S.C. § 103 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