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TARGET BRANDS, INC.  
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MINNEAPOLIS, MN 55403

EXAMINER
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REINHARDT, RICHARD G

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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* SARAH ROXANNE PETERSON,  
AMBER MARIE REIMER, JOEL MICHAEL SEEGER,  
TRINATH SUBUDHI, and BENJAMIN JOSEPH DUPONT<sup>1</sup>

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Appeal 2017-001410  
Application 13/916,107  
Technology Center 3600

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Before CARLA M. KRIVAK, JASON V. MORGAN, and  
AARON W. MOORE, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

*Introduction*

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–8 and 10–20. Claim 9 is canceled. *See* App. Br. 15, Claims App.; *see also* Ans. 4, 16. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Appellant is the applicant, Target Brands, Inc., which the Appeal Brief identifies as the real party in interest. App. Br. 3.

*Invention*

The Abstract discloses a method for retrieving a list of offers that match a search criteria and ordering the list based on quantities of users who selected the offer using an offer selection application.

*Representative Claim*

1. A computer-implemented method comprising:  
retrieving a list of offers that match search criteria provided by a searcher;  
requesting a list of site contacts that are linked to the searcher on a social media site;  
for each offer in the list of offers, determining a quantity of qualified selections of the offer, wherein a quantity of qualified selections for an offer comprises a quantity of people in the list of site contacts who are also registered users of an offer selection application and who selected the offer using the offer selection application;  
ordering, by a processor, the list of offers based on the quantities of qualified selections to produce an ordered list of offers such that an offer with a highest quantity of qualified selections is placed first in the ordered list; and  
providing, by the processor, a user interface displaying the ordered list of offers such that the offer placed first in the ordered list is shown on the display with a top banner of the display.

*Rejections and References*

The Examiner rejects claims 1–8 and 10–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 2–4; *see also* Ans. 4.

The Examiner rejects claims 1–4, 10–14, and 16–20 under 35 U.S.C. § 103 as being unpatentable over Bachman (US 2013/0117097 A1; published May 9, 2013), Soza et al. (US 2009/0319359 A1; published Dec. 24, 2009) (“Soza”), Brown et al. (US 2004/0249712 A1; published

Dec. 9, 2004) (“Brown”), and Acosta-Cazaubon (US 2013/0110595 A1; published May 2, 2013). Final Act. 4–11; Ans. 16.

The Examiner rejects claims 5 and 15 under 35 U.S.C. § 103 as being unpatentable over Bachman, Soza, Brown, Acosta-Cazaubon, and the Examiner’s Official Notice. Final Act. 11–12.

The Examiner rejects claims 6–8 under 35 U.S.C. § 103 as being unpatentable over Bachman, Soza, Brown, Acosta-Cazaubon, and Madsen et al. (US 2014/0074628 A1; published Mar. 13, 2014) (“Madsen”). Final Act. 12–13.

### 35 U.S.C. § 101

#### *Findings and Contentions*

In rejecting claim 1 as being directed to non-statutory subject matter, the Examiner concludes that the claimed method is abstract and that “no machine or specialized computer is needed” to perform the steps directed to “retrieving a list of offers . . . requesting contacts . . . determining contacts who selected offers, ordering a list offers, and providing an interface to display the offers.” Final Act. 2. The Examiner further concludes that the claimed “functions are already well-known in the industry” (*id.*) and “there are no meaningful limitations in the claim that transform the [underlying abstract idea] into a patent eligible application” (*id.* at 3).

Appellant contends the Examiner erred because “the problem solved by claim 1 is necessarily rooted in computer technology.” App. Br. 7. Appellant contends, “the contacts are not just any contacts but instead are contacts linked to the search on a social media site. Such social media sites exist only on the Internet and reconciling a list of such site contacts cannot be done in a person’s head or using paper and pencil.” *Id.* Appellant further

argues, “the limited size of the display creates a problem for displaying search results, which does not have an analog in the pencil and paper world.” Reply Br. 3; *see also* App. Br. 8.

With respect to the Examiner’s 35 U.S.C. § 101 rejections of claims 10 and 16, Appellant similarly argues steps directed to receiving and using credentials to request a list, and to requesting and receiving a list from a social media site, “are necessarily rooted in computer technology because they require a processor that interacts with a social media site.” App. Br. 9.

#### *Analysis*

We agree with the Examiner that claim 1 is directed to an abstract idea. In particular, the claimed method of providing a list of offers—relevant to a search criteria and ordered by the popularity of the offers with contacts of the searcher—is directed to tailoring advertisements (i.e., through ordering) based on information known about the searcher (based on the searcher’s association with others on a social media site and their evidence preferences). Targeting consumers based on their likely preferences, identified as based on being part of a shared community, represents an abstract idea—a practice that is fundamental and long prevalent—similar to taking into account a customer’s location or the time of day. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015).

Marketing has long involved segmentation to tailor promotional messages and offers to increasingly narrower subsets of consumers. Here, such segmentation is based on the contacts of a particular searcher (i.e., those who, based on the information recorded by a social media site, are most likely to have preferences similar to the searcher). While the searcher

is narrowly targeted in this context, and the information used for such targeting comes from a social media site, the underlying idea is nonetheless abstract.

We agree with the Examiner that claim 1 does not have additional recitations making the claimed method anything significantly more than the underlying abstract idea. Appellant argues the problem solved is necessarily rooted in computer technology because the contacts are on a social media site and because “reconciling a list of such site contacts cannot be done in a person’s head or using paper and pencil.” App. Br. 7. However, we agree with the Examiner, “[r]equesting a list of contacts is not something that is rooted in computer technology.” Ans. 5.

Contact lists have long been available outside the realm of computer technology. For example, non-computer address books, desktop card indexes, phone books, and organization directories allow for contact information maintenance without computer technology. Furthermore, we agree with the Examiner that performing the claimed analysis—using computer technology to count how many of a searcher’s contacts selected any particular offer—does not make claim 1 amount to anything significantly more than the underlying abstract idea. Performing such analysis on a computer does not require a “nonconventional computer, network, or display components, or even a ‘non-conventional and non-generic arrangement of known, conventional pieces.’” *Electric Power Group LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (citing *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)).

We are also unpersuaded that “claim 1 provides significantly more than the abstract idea itself because the claim is directed to solving a problem that arises in computer displays in which the displays are too small to contain all the information that is to be displayed.” App. Br. 7. This benefit is not recited as part of the claimed invention. Moreover, we agree with the Examiner that “[o]rdering and displaying lists in descending order . . . is beyond well-known or routine in the art.” Ans. 6.

For these reasons, we agree with the Examiner that claim 1 is directed to non-statutory subject matter. Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 1, and claims 2–8, which Appellant does not argue separately. For similar reasons, we also sustain the Examiner’s 35 U.S.C. § 101 rejections of claims 10–20.

35 U.S.C. § 103—CLAIMS 1–8, 10–14, 16–20

*Findings and Contentions*

In rejecting claim 1 as being obvious, the Examiner relies on Bachman’s method of presenting advertisements to a user based on the user’s interactions with other users, in combination with the teachings and suggestions of Soza, Brown, and Acosta-Cazaubon, to render obvious the disputed recitations. Final Act. 4–6. In particular, the Examiner finds “Brown teaches determining a quantity of qualified selections of the offer, wherein a quantity of qualified selections for an offer comprises a quantity of people in the list of registered users of an offer selection application and who selected the offer using the offer selection application” (Final Act. 5 (citing Brown ¶¶ 48, 52, 71, 132, and 190)), while “Soza teaches ordering the list of offers based on the quantities of qualified selections” (Final Act. 5 (citing Soza ¶¶ 30–32 and 34–37)).

Appellant contends the Examiner erred because Bachman’s “principle of operation is to first display an offer to a user, then obtain permission to access the user’s social media friends, and lastly display the offer to those social media friends.” App. Br. 10. Appellant argues that modifying Bachman would not have been obvious to an artisan of ordinary skill because the modification would result in “all advertisers hav[ing] access to every consumer’s list of social media friends at all times.” *Id.* at 11; *see also* Reply Br. 4–6.

#### *Analysis*

We do not agree with Appellant that modifying Bachman in the manner proffered by the Examiner would change Bachman’s principle of operation. Appellant characterizes Bachman’s teachings as being applicable only in the context of a single advertisement and user response. *See* App. Br. 10. However, we agree with the Examiner that Bachman’s teachings and suggestions are applicable in the context of an initial advertisement and a user response (i.e., one permitting access to a contact list) that affects *subsequent* advertisements. *See* Ans. 13. Bachman explicitly teaches using a user’s social network account information to generate a list of users along with information “that may be useful in determining users to whom certain types of advertisements should be targeted.” Bachman ¶ 34 (*cited in* Ans. 11). Because the social network account information is obtained with the consent of the user in Bachman (*see* ¶ 34), the targeted advertisements represent an example of *subsequent* advertisements. Thus, the Examiner’s finding that Bachman distinguishes between a first advertisement (seeking consent from a user to obtain access to contact information) and subsequent advertisements (that can be affected by the information obtained) is

supported by the cited teachings and suggestions of Bachman. Appellant’s argument that modifying Bachman would allow “advertisers full access to everyone’s social media contacts” (Reply Br. 6) does not persuasively address the distinction between initial and subsequent advertisements the Examiner finds are taught or suggested by Bachman. Moreover, Appellant does not provide persuasive arguments or evidence showing that modifying Bachman in the manner proffered by the Examiner requires such unfettered access to social media contact data. Therefore, Appellant’s argument is unpersuasive of error.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103 rejection of claim 1, and claims 2–8, 10–14, and 16–20, which Appellant does not argue separately with specificity. *See* App. Br. 10–11 and 13.

#### 35 U.S.C. § 103—CLAIM 15

##### *Findings and Contentions*

In rejecting claim 15 as being obvious, the Examiner takes official notice that “it was old and well known to add a counter of actions” such as “how many hits [a] page has received.” Final Act. 12. Thus, the Examiner concludes it would have been obvious to display the “count of a number of friends in a subset of friends who selected an offer” as taught or suggested by Soza. Ans. 16; *see also* Final Act. 9 (citing Soza ¶¶ 30–32, 34–38, 40, 42, 49, and Fig. 5).

Appellant contends the Examiner erred because displaying “a counter of visitors to a web page is significantly different from [displaying] a count of the number of friends in a subset of friends who selected an offer.” App. Br. 12.

*Analysis*

We find Appellant's argument unpersuasive. We agree with the Examiner's findings that Soza teaches or suggests the count information recited in claim 15. *See* Final Act. 9; *see also* Ans. 16. We also agree with the Examiner an artisan of ordinary skill would have recognized that simply displaying this information to the user would have been an obvious use of the information. *See* Final Act. 12.

Accordingly, we sustain the Examiner's 35 U.S.C. § 103 rejection of claim 15.

DECISION

We affirm the Examiner's decision rejecting claims 1–8 and 10–20 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1–8 and 10–20 under 35 U.S.C. § 103.

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