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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* PAUL DAVID SIMS, GREGORY CLAUD EASTERLY, and  
STANLEY COOPER GREEN JR.

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Appeal 2017-001740<sup>1</sup>  
Application 13/682,546<sup>2</sup>  
Technology Center 3600

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Before ANTON W. FETTING, BRUCE T. WIEDER, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

HUTCHINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–31. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our Decision references Appellants’ Appeal Brief (“App. Br.,” filed Mar. 3, 2016) and Reply Brief (“Reply Br.,” filed Nov. 7, 2016), and the Examiner’s Answer (“Ans.,” mailed Oct. 5, 2016) and Final Office Action (“Final Act.,” mailed Nov. 18, 2015).

<sup>2</sup> Appellants identify Cox Digital Exchange, LLC, which is a subsidiary of Cox Enterprises, Inc., as the real party in interest. App. Br. 1.

## CLAIMED INVENTION

Claim 1, reproduced below, is the sole independent claim, and is representative of the subject matter on appeal:

1. A system, comprising:
  - at least one memory that stores computer-executable instructions; and
  - at least one processor configured to access the at least one memory, wherein the at least one processor is configured to execute the computer-executable instructions to:
    - receive, from a database, information associated with one or more vehicles in an inventory of a first dealer or information associated with one or more vehicles in an inventory of a second dealer;
    - receive, from a computing device of a third dealer, an indication from the third dealer of a relationship with the first or second dealer and determine an aggregated score for the first or second dealer based at least in part on a number of hyperlinks provided by the first or second dealer or a number of hyperlinks visited by the first or second dealer;
    - receive, from the computing device of the third dealer, a request to view the information associated with the one or more vehicles;
    - determine that the third dealer is a member of the system;
    - determine a rating of the first or second dealers, a level of trust between the first dealer and the third dealer, or a level of trust between the second dealer and the third dealer based at least in part on the indication of the relationship or the aggregated score; and
    - provide, to the third dealer, the information associated with the one or more vehicles in the inventory of the first or second dealers based at least in part on the determined level of trust or the determined rating.

## REJECTION

Claims 1–31 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

## ANALYSIS

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

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 Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., 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).

Appellants maintain that the § 101 rejection cannot be sustained, because the Examiner fails to establish a prima facie rejection under 35 U.S.C. § 101. App. Br. 3–4; *see also* Reply Br. 2–4, 6. However, the

Federal Circuit has repeatedly observed that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The court has held that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for the 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) (alteration in original). Thus, all that is required of the Office is that it sets forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (“Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

Here, in rejecting claims 1–31 under 35 U.S.C. § 101, the Examiner analyzes the claims using this two-step analysis. Final Act. 3–5; *see also* Ans. 2–4. More specifically, pursuant to the first step of the *Mayo/Alice* analytical framework, the Examiner determines the claims are directed to the abstract idea of “providing vehicle information, which is an abstract idea because providing product information is a fundamental economic practice.” Final Act. 3. The Examiner further determines that the claims are directed to “determining a level of trust between two parties based in part on a relationship, which is an abstract idea because the level of trust between two parties is a way of organizing human activity.” *Id.* at 3–4.

Turning to the second step, the Examiner determines that the elements of the claim, considered individually and as an ordered combination, do not amount to significantly more than the abstract idea. *Id.* at 4–5. In particular, the Examiner determines that the additional limitations (e.g., a memory, processor, database, and computing device) comprise “generic computer components that are claimed to perform their basic functions of storing, processing, and displaying data through a program that implements the abstract idea.” *Id.* at 4. The Examiner determines that the claims do not provide an improvement to the functioning of the computer itself or to another technology or technical field, do not transform an article into another state or thing, do not use a particular machine, and do not recite any unconventional steps. *Id.* at 5. The Examiner, thus, notified Appellants of the reasons for the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132.

In the present case, claim 1 recites a system comprising at least one memory and at least one processor configured to execute the following computer-executable instructions: (1) receive information associated with one or more vehicles in an inventory of a first dealer or a second dealer; (2) receive an indication from a third dealer of a relationship with the first or second dealer and determine an aggregated score; (3) receive a request to view the information; (4) determine that the third dealer is a member; (5) determine a rating of the first or second dealers, a level of trust between the first dealer and the third dealer, or a level of trust between the second dealer and the third dealer based at least in part on the indication; and (6) provide the information associated with the one or more vehicles in the inventory of the first or second dealers based at least in part on the

determined level of trust or the determined rating. The Specification describes that the invention “provid[es] a dealer-to-dealer social marketplace platform for aggregating item inventories and providing the items to potential buyers, sellers, dealers, traders, wholesalers, and/or retailers.” Spec. ¶ 2. “[B]y providing market information, retail pricing, preferred pricing, price backstopping, want ads, and the like, the platform may leverage dealer relationships to facilitate the buying and/or selling of items.” *Id.* ¶ 3. As such, we are not persuaded that the Examiner erred in determining that the claims are directed to determining a level of trust between entities, and providing vehicle information based, in part, on the determined level of trust. We agree with the Examiner (Final Act. 3–4) that this concept is similar to abstract ideas previously recognized by the courts, such as a fundamental economic practice and a method of organizing human activity. For example, providing vehicle information is a long-standing practice in commerce, particularly in connection with vehicle sales, and determining a level of trust between dealers relates to managing interpersonal activities, such as managing relationships or transactions between people.

This concept to which the claims are directed also is similar to patent-ineligible claims focused “on collecting information, analyzing it, and displaying certain results of the collection and analysis.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Stating that “[i]nformation as such is an intangible,” the Federal Circuit in *Electric Power Group* noted that the Federal Circuit has “treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.”

*Id.* (internal citations omitted). The Federal Circuit pointed out that “[i]n a similar vein, . . . [it has] treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Id.* at 1354. Like the claims in *Electric Power Group*, the advance Appellants’ claims “purport to make is a process of gathering and analyzing information of a specified content, then . . . [transmitting] the results, and not any particular assertedly inventive technology,” i.e., an abstract idea. *Id.*

Citing *DDR Holdings*,<sup>3</sup> *Messaging Gateway Solutions*,<sup>4</sup> and *Trading Technologies*,<sup>5</sup> Appellants argue that the Examiner erred in determining the claims are directed to an abstract idea. In each of these arguments Appellants focus primarily on the use of “hyperlinks” to show that the claims are not directed to an abstract idea. Stated differently, Appellants emphasize that the claim language applies to a particular technological environment, involving application to the Internet. Yet, the Federal Circuit cautioned in *DDR Holdings* that “not all claims purporting to address Internet-centric challenges are eligible for patent.” *DDR Holdings*, 773 F.3d at 1258 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014)). Moreover, limiting use of the abstract idea to a particular technological environment is insufficient to transform an abstract idea into patent-eligible subject matter. *See Alice Corp.*, 134 S. Ct. at 2358.

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<sup>3</sup> *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

<sup>4</sup> *Messaging Gateway Sols., LLC v. Amdocs, Inc.*, 2015 WL 1744343 (Apr. 15, 2015).

<sup>5</sup> *Trading Technologies Int’l, Inc. v. CQG Inc.*, 675 F. App’x 1001 (Fed. Cir. 2016).



In particular, Appellants first contend that, similar to the claims in *DDR Holdings*, Appellants' claims are rooted in computer technology because they

address a technical challenge of enabling dealers who may not otherwise know one another to enter into a transaction with confidence based at least in part on one or more relationships between the dealers and an aggregated score of the dealers, which may be based on a number of hyperlinks provided by each of the dealers or a number of hyperlinks visited by each of the dealers.

App. Br. 4. Appellants contend that “[t]his technical challenge does not arise in the ‘brick and mortar’ context.” *Id.* Appellants reason that “[h]yperlinks are exclusive to the [I]nternet, and the present application provides a connection between dealers based in part on a number of hyperlinks provided by each of the dealers or a number of hyperlinks visited by each of the dealers.” *Id.* at 5.

Yet, the problem Appellants identify, i.e., enabling dealers to enter a transaction with confidence, is a business challenge, not a technical problem rooted in computer technology. Similarly, the solution Appellants describe, i.e., providing a connection between dealers which may be based in part on a number of hyperlinks, is an improvement to a business practice (namely, providing information) that itself qualifies as an abstract idea, not a technological improvement. Similar to the patent-ineligible claims in *Electric Power Group*, the focus of Appellants' claims is “on certain independently abstract ideas that use computers as tools,” and not on an improvement in computers as tools or other technology. *Electric Power Grp.*, 830 F.3d at 1354.

Appellants attempt to draw a parallel to the claims at issue in *Messaging Gateway Solutions*. App. Br. 5–6. But even were this district court case binding on this panel, Appellants’ arguments would fail for reasons similar to those described above with reference to *DDR Holdings*. In *Messaging Gateway Solutions*, the district court held that the claims resembled the patent-eligible claims at issue in *DDR Holdings*. *Messaging Gateway Sols.*, 2015 WL 1744343 at \*5 (“The Court agrees that *DDR Holdings* is apposite.”) Specifically, the court held that the claims address “a problem unique to text-message telecommunication between a mobile device and a computer” by manipulating conventional interaction between a mobile phone and a computer. *Id.* “Conventionally, phones could not send SMS text messages to computers,” but the claimed method “manipulates that interaction by translating the message in a way that allows the computer to receive and understand the message.” *Id.*

Appellants contend that the present invention similarly addresses a problem particular to the online vehicle marketplace in which dealers are unable “to meet one another and personally inspect the vehicles,” making dealers “suspicious and less likely to enter into a sale.” App. Br. 5–6. And Appellants further contend that the claimed solution, which provides a connection between dealers based in part on a number of hyperlinks, is “tethered to the technology that created the problem,” like the claims in *Messaging Gateway Solutions*. *Id.* However, the problem Appellants identify (i.e., dealers being suspicious and less likely to enter a deal) is a business challenge, not a problem rooted in technology. Using the Internet to perform an abstract business practice or tying application of the abstract idea to a particular technological environment involving the Internet is not

sufficient for patent eligibility. *See DDR Holdings*, 773 F.3d at 1258 (the claims “do not broadly and generically claim ‘use of the Internet’ to perform an abstract business practice (with insignificant added activity)”).

Appellants argue that the claims are analogous to the claims at issue in *Trading Technologies*, because the “ability . . . for dealers to view inventory and transact with previously unknown dealers, regardless of geography, is new to the vehicle dealership industry.” App. Br. 6. “As a result, the dealers do not necessarily trust one another.” *Id.* at 7. Yet, a lack of trust between parties is an age-old transactional concern, not a technical problem. Here, we find no technological improvement in the instant claims analogous to *Trading Technologies*’ technological improvement of graphical user interfaces.

Turning to step two, Appellants argue that the combination of elements recited in claim 1 amounts to significantly more than an abstract idea. *Id.* at 7–8. Specifically, Appellants identify “facilitating searches and purchases of vehicles based at least in part on a relationship between dealers and an aggregated score of the dealers based on a number of hyperlinks provided by each of the dealers or a number of hyperlinks visited by each of the dealers,” as the inventive concept. *Id.* at 8. As an initial matter, we note that claim 1 recites providing information “based at least in part on the determined level of trust or the determined rating,” and that the rating or level of trust is “based at least in part on the indication of the relationship or the aggregated score.” In other words, in contrast to Appellants’ suggestion, claim 1 does not require determining a level of trust or rating on an aggregated score; instead, an indication of the relationship may be used.

But even if claim 1 required the aggregated score to determine a rating or level of trust and, ultimately, to provide the information associated with one or more vehicles, claim 1 recites no more than results-based functional limitations. Such claims are drawn to an abstract idea because they claim the desired functionality, not a particular way of performing that function. *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258–59 (Fed. Cir. 2016). Stated differently, nothing in claim 1 recites any particular way of implementing the claimed functions. Instead, any manner of determining an aggregated score, for example, may be used, so long as it is based at least in part on a number of hyperlinks provided by a first or second dealer or a number of hyperlinks visited by the first or second dealer. Likewise, any manner of determining a rating or level of trust, and providing information may be employed by claim 1. *See Electric Power*, 830 F.3d at 1355 (the “[i]nquiry [at step two] therefore must turn to any requirements for *how* the desired result is achieved”); *see also id.* at 1356 (“the essentially result-focused, functional character of claim language has been a frequent feature of claims held ineligible under § 101, especially in the area of using generic computer and network technology to carry out economic transactions”); *id.* (“there is a critical difference between patenting a particular concrete solution to a problem and attempting to patent the abstract idea of a solution to the problem in general”).

Appellants do not identify, and we do not find, anything in the Specification to indicate that any of the claimed functions invokes any assertedly inventive programming or is implemented using other than generic computer components to perform generic computer functions. To the contrary, Appellants’ Specification provides, for example, that a module

“may determine an aggregated score for a dealer based on a combination of a dealer rating, a vehicle rating, a transaction rating, and/or an activity score.” Spec. ¶ 27. In some embodiments, “the aggregated score may be based on a combination of conducted transactions, a number of positive comments provided/received, a number of hyperlinks provided, a number of hyperlinks visited, a number of groups created, a number of groups included in, and/or a value provided to the group or system.” *Id.* Put differently, the number of hyperlinks provided and a number of hyperlinks visited are merely among two types of information that can be considered in any high-level step of determining an aggregated score.

The Specification further describes a similar high-level, determining a rating or a level of trust based on the indication of the relationship or the aggregated score and providing the information based on the results. *Id.* ¶ 28. Thus, both determining steps identify the information to be analyzed by source, but lack any requirements for how the desired determining is achieved. Yet, “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *See Electric Power*, 830 F.3d at 1355.

Here, the claim language does not recite what is inventive about the combination of functional limitations or about the technology used to perform the steps, and Appellants have not pointed us to, and we do not see, any portion of the Specification that fills this gap. Therefore, we are not persuaded that implementation of claim 1 or its dependent claims requires something other than a generic computer performing well-understood,

routine and conventional computer functions, such as receiving, processing, and transmitting data.

In the Reply Brief, Appellants cite *McRO*<sup>6</sup> for the proposition that the incorporation of claimed rules can provide an inventive concept by improving an existing technological process. *See* Reply Br. 4–5. In *McRO*, the Federal Circuit concluded that the claim, when considered as a whole, was directed to a “technological improvement over the existing, manual 3-D animation techniques” through the “use of limited rules specifically designed to achieve an improved technological result in conventional industry practice.” *McRO*, 837 F.3d at 1316. Specifically, the Federal Circuit found that the claimed rules allow computers to produce accurate and realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animators; and the rules are limiting because they define morph weight sets as a function of phoneme sub-sequences. *Id.* at 1313 (citations omitted). In contrast, here, Appellants have not identified any analogous improvement attributable to the claimed invention. Although providing information based at least in part on a determined level of trust or a determined rating may improve a business process, it does not achieve an improved technological result. We see no parallel between the limiting rules described in *McRO* and the results-based rules recited in Appellants’ claims.

Additionally, in the Reply Brief, Appellants cite *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) and charge that the claims recite a specific combination of elements to

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<sup>6</sup> *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299 (Fed. Cir. 2016).

determine levels of connection between vehicle dealers based at least in part on a relationship between dealers and an aggregated score. Reply Br. 5. However, we see no parallel between Appellants' claims and the claims in *Bascom*. In *Bascom*, the claims described an inventive concept in the non-conventional and non-generic arrangement of known, conventional pieces. *Bascom*, 827 F.3d at 1350. Specifically, the Federal Circuit determined that the claimed installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user provided an inventive concept in that it gave the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. *Id.* In contrast, as described above, no technological improvement is apparent in the claimed invention, whether the elements are considered as a combination or individually.

Appellants argue that the claims do not preempt all practical applications of the idea, and thus are patent-eligible. App. Br. 8–10. There is no dispute that the Supreme Court has described “the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice Corp.*, 134 S. Ct. at 2354. But, characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354). “[P]reemption may signal patent ineligible

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subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

In view of the foregoing, Appellants do not apprise us of error in the Examiner’s determination that the claims are judicially excepted from statutory subject matter. We, therefore, sustain the rejection of the claims under 35 U.S.C. § 101.

#### DECISION

The Examiner’s rejection of claims 1–31 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