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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/750,226	03/30/2010	Chad Gibson	328949.01	8434

69316 7590 06/20/2018

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EXAMINER
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ART UNIT	PAPER NUMBER
3629	

NOTIFICATION DATE	DELIVERY MODE
06/20/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHAD GIBSON and ARJUN DAYAL

Appeal 2017-001817
Application 12/750,226
Technology Center 3600

Before HUBERT C. LORIN, KENNETH G. SCHOPFER, and AMEE A. SHAH, *Administrative Patent Judges*.

SHAH, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

The Appellants[2] appeal under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1 and 3–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Throughout this Decision, we refer to the Appellants' Appeal Brief ("Appeal Br.," filed Feb. 10, 2016), Reply Brief ("Reply Br.," filed Nov. 14, 2016), and Specification ("Spec.," filed Mar. 30, 2010), and to the Examiner's Answer ("Ans.," mailed Sept. 12, 2016), and Final Office Action ("Final Act.," mailed July 10, 2015).

[2] According to the Appellants, the real party in interest is Microsoft Technology Licensing, LLC. Appeal Br. 3.

STATEMENT OF THE CASE

The Appellants' invention relates to "[s]ummary presentation of media consumption" (Spec. ¶ 2) that "allow[s] a user to review previously consumed media in the form of a personal highlight reel" (*id.* ¶11).

Claims 1, 7, and 14 are the independent claims on appeal. Claim 1 (Appeal Br. 65–66 (Claims App.)) is exemplary of the subject matter on appeal and is reproduced below (lettered bracketing added for reference).

> 1. A method for generating a personal highlight reel at a media consumption aggregator computing device including an input/output interface, a logic subsystem, and a data-holding subsystem, the method comprising:
>
> [(a)] receiving via a first computer network, at the media consumption aggregator computing device, computer-readable personal consumption data indicating one or more media units consumed by a user computing device;
>
> [(b)] automatically computer-processing the personal consumption data with the media consumption aggregator computing device to identify a user corresponding to the personal consumption data;
>
> [(c)] storing, on the media consumption aggregator device, the personal consumption data in association with the user identifier;
>
> [(d)] automatically computer-evaluating consumption parameters of each of the one or more media units to identify, with the media consumption aggregator computing device, one or more relevant personal media units, the consumption parameters including one or more of a number of times the identified user consumed each of the one or more media units, a time at which each of the one or more media units was consumed by the identified user, a rating of each of the one or more media units by the identified user, and a recommendation associated with each of the one or more media units from the identified user;
>
> [(e)] generating, with the media consumption aggregator computing device, a computer displayable personal highlight

> reel including a computer-viewable collection of one or more personal media events representative of the one or more relevant personal media units arranged in a computer-determined viewing order; and
>
> [(f)] outputting the personal highlight reel from the media consumption aggregator computing device to a reviewing computing device via the first or a second computer network for computer presentation to a user via the reviewing computing device.

REJECTIONS[3]

I. Claims 1 and 3–20 stand rejected under 35 U.S.C. § 101 as being a judicial exception.

II. Claims 1 and 3–6[4] stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Horowitz et al. (US 2009/0160859 A1, pub. June 25, 2009) (hereinafter "Horowitz") and Dunk et al. (US 2011/0060649 A1, pub. Mar. 10, 2011) (hereinafter "Dunk").

III. Claims 7, 8, and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Horowitz, Crawford (US 2007/0214180 A1, pub. Sept. 13, 2007), and Chijiiwa et al. (US 2009/0070852 A1, pub. Mar. 12, 2009) (hereinafter "Chijiiwa").

IV. Claims 9 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Horowitz, Crawford, Chijiiwa, and Dunk.

V. Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Horowitz, Crawford, Chijiiwa, and Luo et al. (US 2011/0010384 A1, pub. Jan. 13, 2011) (herein after "Luo").

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[3] We rely on the grounds of rejection as presented in the Answer at page 2.
[4] We consider the Examiner's inclusion of claim 2 (Ans. 2), which has been cancelled, as harmless error.

VI. Claims 14 and 16–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Horowitz, Crawford, and Dunk.

VII. Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Howoritz, Crawford, Dunk, and Luo.

ANALYSIS

Rejection I – Patent-Ineligible Subject Matter – § 101

Under 35 U.S.C. § 101, a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The Supreme Court has "long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 588–89 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 78–79 (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 in that analysis is to "determine whether the claims at issue are *directed to* one of those patent-ineligible concepts." *Id.* (emphasis added) (citing *Mayo*, 566 U.S. at 79). If so, the second step is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether the additional elements "'transform the nature of the

claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 566 U.S. at 78–79).

The step-one analysis requires us to consider the claims "in their entirety to ascertain whether their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). The question is whether the claim as a whole "focus[es] on a specific means or method that improves the relevant technology" or is "directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

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.'" *Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Claims 1, 3, and 4

Under the first step of the *Alice* framework, the Examiner determines that the claimed invention is directed to "a method of reviewing previously consumed media data in the form of a personal highlight reel" (Ans. 4) and a method of "organizing, collecting information, separating and transmitting information according to its classification" (Final Act. 9), an abstract idea.

The Appellants recite the limitations of claim 1 and contend that they were not considered by the Examiner (Appeal Br. 11–12; *see also* Reply Br. 2) and that the Examiner's rejection "does not cite any decision that has held that outputting a computer-displayable personal highlight reel for computer presentation to a user via a reviewing computing device, or any

similar concept, is an abstract idea" (Appeal Br. 12). These arguments are unpersuasive because the Examiner does look to the language of the claim in making the determination that the claim is directed to an abstract idea. *See* Final Act. 9; Ans. 4–5. The Examiner also and cites to and compares the stated abstract idea to judicial decisions. *See* Final Act. 10; Ans. 5.

We note that the Title of the Specification provides for a "SUMMARY PRESENTATION OF MEDIA CONSUMPTION." The Background section of the Specification discusses that "receiving recommendations from a friend . . . can result in a user receiving unwelcome or too-frequent recommendations, and manually filtering a friend's media consumption history can be cumbersome and time-consuming." Spec. ¶ 1. The claimed invention addresses these problems by a "[s]ummary presentation of media consumption" (*id.* ¶ 2) that "allow a user to review previously consumed media in the form of a personal highlight reel" (*id.* ¶ 11).

Claim 1 provides for "[a] method for generating a personal highlight reel at a media consumption aggregator computing device[,] . . . the method comprising:" (a) receiving, at an aggregator computing device, personal consumption data indicating media units consumed by a user computing device, (b) processing, with the aggregator device, the personal consumption data to identify a user corresponding to the data, (c) storing, on the aggregator device, the personal consumption data with the user identifier, (d) evaluating, with the aggregator device, consumption parameters to identify relevant personal media units, (e) generating, with the aggregator device, a computer displayable personal highlight reel, and (f) outputting,

from the aggregator device, the personal highlight reel. Appeal Br. 65–66 (Claims App.).

The Specification does not provide details for steps (b), (d), and (e) of processing to identify a user, evaluating parameters to identify media units, and generating a reel. Based on the portions relied on by the Appellants as support for limitation (b) of processing to identify a corresponding user (Appeal Br. 5 (citing Spec. ¶¶ 20, 45, 89, Figs. 3, 6)), the processing involves asking for and receiving data representative of a user identifier. *See* Spec. ¶ 20 ("users of the media consumption aggregator 108 may be asked to provide a user log-in in order to consume media units and/or to track media consumption"), ¶ 45 ("receiving personal consumption data which may be associated with a user identifier"), ¶ 89 ("receiving personal consumption data indicating media units consumed by a user represented by a user identifier"). For limitation (d) of evaluating parameters to identify media units, the Specification does not mention the word "evaluate." The Appellants rely on paragraph 29 and Figure 2 of the Specification for support for this limitation. Appeal Br. 5–6. Although paragraph 29 discusses the parameters claimed, there is no discussion of the technological manner or algorithm for how or in what way the parameters are evaluated. For limitation (e) of generating the personalized reel, the Appellants cite to paragraphs 52, 63, and 71 and Figures 3 and 7 of the Specification as support for this limitation. Appeal Br. 6. These portions simply state that a personalized highlight reel is generated or created (*see* Spec. ¶¶ 52, 63, 71, Figs. 3, 7), but provide no further details on the technological manner or algorithm used to generate the reel.

The Specification provides that "[t]the types of devices capable of implementing the system and methods described herein are not limited to the devices illustrated, and may include any of a television, set-top box, desktop computing device, laptop computing device, personal digital assistant (PDA), mobile phone, gaming computing device, etc." Spec. ¶ 117. "[T]he systems, methods, and user interfaces illustrated herein are merely exemplary and not meant to be limiting specifically." *Id.* ¶ 118. The media consumption aggregator is a generic computing system that includes a logic subsystem configured to execute instructions, and a data-holding subsystem configured to store data. *See id.* ¶¶ 118–125.

In light of the Specification's description of the problem and solution, the purported advance over the prior art by the claimed invention is a way to present a summary of media content that is more relevant to and easier for the user. In that context, claim 1 is directed to generating and displaying summarized and personalized media content based on the evaluation of consumption parameter data.[5] The claim here is akin to ones our reviewing court has deemed abstract in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015) (customizing and tailoring web page content based on navigation history and known user information), *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (gathering and analyzing information of a specific content and displaying the results), *Affinity Labs of Texas, LLC v.*

[5] We note that "[a]n abstract idea can generally be described at different levels of abstraction." *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). The Board's "slight revision of its abstract idea analysis does not impact the patentability analysis." *Id.* at 1241.

Amazon.com Inc., 838 F.3d 1266, 1271 (Fed. Cir. 2016) (customizing a user interface to have targeted advertising based on user information), and *Two-Way Media Ltd. V. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017) ("routing information using result-based functional language" comprising converting, routing, controlling, monitoring, and accumulating records). Here, the claim involves nothing more than receiving, processing, storing, and analyzing/identifying data of a specific content, and generating and presenting content based on the analysis, without any particular inventive technology or description of how to achieve the results in a non-abstract way— an abstract idea. *See Elec. Power*, 830 F.3d at 1354; *Two-Way Media*. As such, we find unpersuasive the Appellants' arguments that the claim is not directed to an abstract idea because it is not directed to a formula or a fundamental economic practice. *See* Appeal Br. 14–18.

We also find unpersuasive the Appellants' argument that the claim is analogous to those of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), because "claim 1 is necessarily rooted in computer technology and overcomes a problem specifically arising in the realm of computer systems." Appeal Br. 13; *see also* Reply Br. 4 ("claim 1 is directed to solving a technological problem that specifically arises in the realm of computers"). In *DDR Holdings*, the Federal Circuit determined that the claims addressed the problem of retaining website visitors who, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be transported instantly away from a host's website after clicking on an advertisement and activating a hyperlink. *DDR Holdings*, 773 F.3d at 1257. The Federal Circuit, thus, held that the claims were

directed to statutory subject matter because they claim a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *Id.* The court cautioned that "not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* at 1258. And the court contrasted the claims to those at issue in *Ultramercial*, in that, in *DDR Holdings*, the computer network was not operating in its "normal expected manner" and the claims did not "recite an invention that is . . . merely the routine or conventional use of the Internet." *Id.* at 1258–59.

In contrast, there is no indication here that the claimed invention claims a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *Id.* at 1257. According to the Appellants, the claim "specifically addresses the problem of decreasing the time a user spends searching for and reviewing representations of consumed content." Appeal Br. 14; *see also* Reply Br. 5 ("the problem of being unable to quickly review relevant content that was previously consumed on a computing device"). As discussed above, the Specification provides that the claim addresses the problem regarding "receiving unwelcome or too-frequent recommendations" and the "cumbersome and time-consuming" nature of manually filtering history data. Spec. ¶ 1. Although the content is computer-centric, i.e., "the human mind cannot generate and output a *computer-displayable* personal highlight reel as recited in claim 1" (Appeal Br. 13; Reply Br. 3) (emphasis added), and is thus tied to a computer, the problems of unwelcome and frequent recommendations and time-consuming nature of searching, reviewing, and filtering data are ones that existed prior to the Internet. *See Ultramercial*,

772 F.3d at 716–17. As the Appellants note, recording, selecting, and editing media clips had been done manually (Appeal Br. 14) and can be presented manually, i.e., through a film reel. The purported solution automates that process using conventional computers/devices and a network operating in their normal capacities to receive, process, store, and analyze data of a specific content, and generate and present content based on the analysis. *See* Spec. ¶¶117–125. The claim recites an invention that is merely the routine or conventional use of computers to perform an abstract practice. *DDR Holdings*, 773 F.3d at 1258–59.

Under the second step of the *Mayo/Alice* framework, we agree with and find supported the Examiner's determination that the elements of claim 1, individually or as an ordered combination, do not amount to significantly more than the above-identified abstract idea. *See* Final Act. 9–10; Ans. 6–13. We are not persuaded of Examiner error by the Appellants' arguments that assert the opposite. *See* Appeal Br. 19–21. We note that the Specification conveys that the computer-related components recited in the claims (e.g., computing devices and network) are routine and conventional computer components. *See e.g.*, Spec. ¶¶ 16, 117–125, 69–80, Fig. 1.

We find unpersuasive the Appellants' arguments that "the precise manner in which claim 1 performs the above actions and outputs the computer-displayable personal highlight reel offers improvements that qualify as *something more*." Appeal Br. 19. The steps of receiving, storing, and outputting data are well-understood, routine, and conventional functions of a generic computer. *See, e.g., Elec. Power*, 830 F.3d at 1354–55 (gathering, sending, monitoring, analyzing, selecting, and presenting information does not transform the abstract process into a patent-eligible

invention), *Intellectual Ventures I*, 792 F.3d at 1371 (entering, breaking down, organizing, and transmitting information through use of a conventional computer do not confer patent eligibility), *and Versata Development Group, Inc. v. SAP America, Inc.* 793 F.3d 1306, 1334 (Fed. Cir. 2015) (storing, retrieving, sorting, eliminating, and receiving data are well-known, routine, and conventional functions of a generic computer).

Further, as noted above, the Specification provides no details on how the steps of processing, evaluating, identifying, and generating are performed; rather, the functions are claimed generically. *See Affinity Labs*, 838 F.3d at 1271; *see also Affinity Lab of Texas v, DIRECTV, LLC*, 838 F.3d 1253, 1262 (Fed. Cir. 2016) ("More generally, 'simply appending conventional steps specified at a high level of generality' to an abstract idea does not make the idea patentable.") (quoting *Mayo*, 132 S.Ct. at 1300). There is no further description of any particular technology for performing the steps. *See TDE Petroleum Data Sols., Inc., v. AKM Enter., Inc.*, 657 F. App'x 991, 993 (Fed. Cir. 2016), *cert. denied*, 137 S. Ct. 1230 (2017) ("As we discussed at greater length in *Electric Power*, the claims of the '812 patent recite the *what* of the invention, but none of the *how* that is necessary to turn the abstract idea into a patent-eligible application.") (citing *Elec. Power Grp.*, 830 F.3d at 1353); *see also Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015) ("As the district court observed, claim 1 contains no restriction on how the result is accomplished.").

We also find unpersuasive the Appellants' contention that claim 1 improves the computer functionality by providing "a faster computer search" compared to a manual sifting (Appeal Br. 19) and "by decreasing the

resource load on the computer when presenting a collection of personal media events" (*id.* at 20). *See also* Reply Br. 5–6 ("claim 1 of the subject application (like the claims in *Enfish*) is directed to an improvement to computer functionality itself"). The computer technology or functionality itself is not improved. Any improvement resides in the routine tasks of receiving, processing, evaluating, and generating data. "[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible." *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2359);

> "In order for the addition of a machine to impose a meaningful limit on the scope of a claim, it must play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly."

Versata, 793 F.3d at 1335 (quoting *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1333 (Fed. Cir. 2010)). Here, the claim does not meet this test, but instead functions solely as a mechanism for automating a manual process so that the process is performed more quickly. *See Intellectual Ventures I*, 792 F.3d at 1367 ("claiming the improved speed or efficiency inherent with applying the abstract idea on a computer [does not] provide a sufficient inventive concept"). The introduction of a computer to implement an abstract idea is not a patentable application of the abstract idea. *Alice*, 134 S. Ct. at 2357–58.

Further, although the Appellants now contend that the claim reduces resource loads (Appeal Br. 20), the Specification provides no support for such a contention. As discussed above, the Specification provides that the invention achieves benefits in reducing intrusions to the user and making the

process less cumbersome and time-consuming for the user. *See* Spec. ¶ 1; Appeal Br. 19–20. The components used for the claimed method are conventional, generic computers. *See* Spec. ¶¶ 117–125. There is no discussion of how the process reduces resource load or that this was a purpose of the invention at the time the invention was filed.

We are further not persuaded by the Appellants' argument that claim 1 is analogous to "example claim 4 of Example 23 of the *July 2015 Update*." Appeal Br. 20 (citing "July 2015 Update Appendix 1: Examples"). In that example, the "limitations are not merely attempting to limit the mathematical algorithm to a particular technological environment. Instead, these claim limitations recites a specific application of the mathematical algorithm that improves the functioning of the basic display function of the computer itself." July 2015 Update 12. Specifically, the "scaling and relocating textual information in overlapping windows improves the ability of the computer to display information and interact with the user." *Id.* The Appellants argue that claim 1 similarly "recites features that improve the ability of the computer to display information and interact with the user" because "automatically computer-evaluating consumption parameters of media units enables the computer to efficiently find the most relevant consumption data, generate, and output a reviewable computer-displayable highlight reel of representations of associated consumed content." Appeal Br. 20–21. However, this does not improve the computer's ability to display the information. Rather, the computer is simply displaying content more relevant to the user (*see id.* at 21), similar to the display of customized content in *Intellectual Venture I*, 792 F.3d at 1370–71.

Finally, we are also not persuaded by the Appellants' reliance on *SiRF Technology Inc. v. International Trade Commission*. Appeal Br. 21. In *SiRF Tech.*, decided prior to *Alice*, the court found that the method clearly could not be performed without the use of the GPS receiver claimed because "without a GPS receiver it would be impossible to generate pseudoranges or to determine the position of the *GPS receiver* whose position is the precise goal of the claims." *SiRF Tech.*, 601 F.3d at 1332. Although claim 1 requires a computer (*see* Reply Br. 3–5 ("The elements recited in claim 1 are not abstract concepts that can be executed without a computer")), the claim automates a manual process by using generic computer components operating in their ordinary capacities. *See DDR Holdings,* 773 F.3d at 1256 ("[A]fter *Alice,* there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. . . . The bare fact that a computer exists in the physical rather than purely conceptual realm 'is beside the point'" (internal citation omitted) (quoting *Alice*, 134 S. Ct. at 2358)).

Based on the foregoing, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 1 and of dependent claims 3 and 4, for which the Appellants rely on the same arguments presented for claim 1 (Appeal Br. 23).

Claims 5 and 6

The Appellants contend that dependent claims 5 and 6 are "patent eligible for at least all of the reasons discussed with reference to claim 1." Appeal Br. 22. The Appellants also repeat the argument presented for claim 1 that the claims are not abstract because a court has not identified a

similar concept as claimed. *Id.* at 22–23. These arguments are not persuasive for the reasons provided above with respect to claim 1.

The Appellants further argue that "claim 5 is directed to an even more-specific method of sending the computer-displayable personal highlight reel to at least one friend computing device and thus is further removed from being directed to an abstract idea." Appeal Br. 22. The Appellants similarly argue that:

> claim 6 is directed to an even more-specific method of receiving friend consumption data, identifying relevant community media units from the friend consumption data, filtering relevant community media units, and generating and outputting a computer-displayable community highlight reel including friend media events, and thus is further removed from being directed to an abstract idea.

Id. at 22–23. This argument is unpersuasive because "the abstract nature of the claims is not altered at step one by the existence of claim limitations (much less characterizations in the specification) that 'add a degree of particularity' to the implementation of the abstract idea." *In re Eberra*, No. 2017-2394, 2018 WL 2077938, at *2 (Fed. Cir. May 4, 2018) (citing *Ultramercial*, 772 F.3d at 715).

In response to the Appellants' argument that the claims are "neither anticipated nor rendered obvious by any prior art, thus demonstrating that the specific limitations of claim[s] 5 [and 6] are neither routine nor conventional" (Appeal Br. 22–23), we note that an abstract idea does not transform into an inventive concept just because the prior art does not disclose or suggest it. *See Mayo*, 132 S. Ct. at 1304. "Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry." *Ass'n for Molecular Pathology*, 133 S. Ct. at 2117. Indeed, "[t]he

'novelty' of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter." *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981); *see also Mayo*, 132 S. Ct. at 1304 (rejecting "the Government's invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101").

Further, sending, receiving, identifying, filtering, and generating data are well-understood, routine, and conventional functions of a generic computer, including that used to perform the method claimed. *See supra; see also BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1341, 1347–49 (Fed. Cir. 2016) (filtering content is an abstract idea and by itself, a routine activity).

Thus, we sustain the Examiner's rejection under 35 U.S.C. § 101 of dependent claims 5 and 6.

Claims 7–12

The Appellants contend that independent claim 7 is patent-eligible for substantially similar reasons as presented for claim 1. *See* Appeal Br. 23–34. For the reasons discussed above with respect to claim 1, we do not agree with the Appellants' contention.

Specifically, regarding the first step of the *Alice/Mayo* analysis, the Appellants recite the limitations of claim 7 and contend that they were not considered by the Examiner (*id.* at 23–25; *see also* Reply Br. 2) and that the Examiner's rejection "does not cite any decision that has held that outputting a targeted computer-displayable friend highlight reel for computer presentation to a user via a reviewing computing device, or any similar concept, is an abstract idea" (Appeal Br. 25). We are unpersuaded by this

argument because, as discussed above, the Examiner does look to the language of the claim in making the determination that the claim is directed to an abstract idea, and cites to and compares the stated abstract idea to judicial decisions. *See* Final Act. 9; Ans. 4–5.*See* Final Act. 10; Ans. 5.

For the reasons discussed above with respect to claim 1, independent claim 7 is directed to generating and displaying summarized and personalized media content based on the evaluation of consumption parameter data, akin to ones our reviewing court has deemed abstract in the cases cited above. Here, the claim involves nothing more than receiving, storing, and evaluating data of a specific content (i.e., friend consumption data), and generating and presenting content based on the analysis, without any particular inventive technology or description of how to achieve the results in a non-abstract way— an abstract idea. *See Elec. Power*, 830 F.3d at 1354; *Two-Way Media*. As discussed above, we find unpersuasive the Appellants' arguments that the claim is not directed to an abstract idea because it is not directed to a formula or a fundamental economic practice. *See* Appeal Br. 27–31.

With regards to the Appellants' argument that claim 7 is analogous to those of *DDR Holdings* (*see* Appeal Br. 25–27), we disagree for the reasons provided above. To summarize, there is no indication here that the claimed invention claims a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR Holdings*, 773 F.3d at 1257. As discussed above, the problem of "decreasing the time a user spends searching for and reviewing representations of a friend's consumed content" (Appeal Br. 26; *see also* Reply Br. 5 ("the problem of being unable to quickly review relevant content

that was previously consumed on a computing device"), although requiring a computer (*see* Appeal Br. 24–25; Reply Br. 3) existed prior to the Internet, having been done manually. *See* Appeal Br. 26; *see also Ultramercial*, 772 F.3d at 716–17. And, as discussed above, the purported solution automates that process using conventional computers/devices and a network operating in their normal capacities to receive, process, store, and analyze data of a specific content, and generate and present content based on the analysis. *See* Spec. ¶¶117–125.

Under the second step of the *Mayo/Alice* framework, for the reasons discussed above, we agree with and find supported the Examiner's determination that the elements of claim 7, individually or as an ordered combination, do not amount to significantly more than the above-identified abstract idea. *See* Final Act. 9–10; Ans. 6–13. We are not persuaded of Examiner error by the Appellants' arguments that assert the opposite. *See* Appeal Br. 31–34.

Specifically, receiving, storing, identifying, generating, and outputting data (*see* Appeal Br. 31) are well-understood, routine, and conventional functions of a generic computer, including that used to perform the method claimed. *See supra*. And, the Appellants repeat the arguments presented for claim 1 that claim 7 improves computer functionality, is analogous to example claim 4 of Example 23 of the July 2015 Update, and is analogous to *SiRF Tech*. *See* Appeal Br. 31–34. For the reasons discussed above, these arguments are not persuasive.

Thus, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 7 and of dependent claims 8–12, which rely on the same arguments presented for claim 7 (Appeal Br. 34).

Claim 13

The Appellants contend that dependent claim 13 is "patent eligible for at least all of the reasons discussed with reference to claim 7." Appeal Br. 34. The Appellants also repeat the argument presented for claim 7 that the claims are not abstract because a court has not identified a similar concept as claimed. *Id.* at 34. These arguments are not persuasive for the reasons provided above with respect to claim 7.

The Appellants further argue that "claim 13 is directed to an even more-specific method of receiving a selected upcoming event of the interactive schedule and, in response, scheduling an appointment related to the selected upcoming event, and thus is further removed from being directed to an abstract idea." *Id.* This argument is unpersuasive because "the abstract nature of the claims is not altered at step one by the existence of claim limitations (much less characterizations in the specification) that 'add a degree of particularity' to the implementation of the abstract idea." *In re Eberra*, 2018 WL 2077938, at *2.

In response to the Appellants' argument that the claims are "neither anticipated nor rendered obvious by any prior art, thus demonstrating that the specific limitations of claim 13 are neither routine nor conventional" (Appeal Br. 34), as discussed above with respect to claim 5 and 6, we emphasize that an abstract idea does not transform into an inventive concept just because the prior art does not disclose or suggest it. *See Mayo*, 132 S. Ct. at 1304. Further, as discussed above with respect to claims 1 and 7, receiving and scheduling, i.e., entering, data are well-understood, routine, and conventional functions of a generic computer, including that used to perform the method claimed.

Thus, we sustain the Examiner's rejection under 35 U.S.C. § 101 of dependent claim 13.

Claims 14, 15, and 17–20

The Appellants contend that independent claim 14 is patent-eligible for substantially similar reasons as presented for claims 1 and 7. *See* Appeal Br. 35–46. For the reasons discussed above with respect to claims 1 and 7, we do not agree with the Appellants' contention.

Specifically, regarding the first step of the *Alice/Mayo* analysis, the Appellants recite the limitations of claim 14 and contend that they were not considered by the Examiner (*id.* at 35–36; *see also* Reply Br. 2) and that the Examiner's rejection "does not cite any decision that has held that outputting a computer-displayable community highlight reel for computer presentation to a user via a reviewing computing device, or any similar concept, is an abstract idea" (Appeal Br. 36). We are unpersuaded by this argument because, as discussed above, the Examiner does look to the language of the claim in making the determination that the claim is directed to an abstract idea, and cites to and compares the stated abstract idea to judicial decisions. *See* Final Act. 9–10; Ans. 4–5.

For the reasons discussed above with respect to claims 1 and 7, independent claim 14 is directed to generating and displaying summarized and personalized media content based on the evaluation of consumption parameter data, akin to ones our reviewing court has deemed abstract in the cases cited above. Here, the claim involves nothing more than receiving, determining, storing, identifying, and filtering data of a specific content (i.e., friend and community consumption data), and compiling and presenting content based on the analysis, without any particular inventive technology or

description of how to achieve the results in a non-abstract way— an abstract idea. *See Elec. Power*, 830 F.3d at 1354; *Two-Way Media*. As discussed above, we find unpersuasive the Appellants' arguments that the claim is not directed to an abstract idea because it is not directed to a formula or a fundamental economic practice. *See* Appeal Br. 38–42.

With regards to the Appellants' argument that claim 14 is analogous to those of *DDR Holdings* (*see* Appeal Br. 37–38), we disagree for the reasons provided above. To summarize, there is no indication here that the claimed invention claims a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR Holdings*, 773 F.3d at 1257. As discussed above, the problem of "decreasing the time a user spends searching for and reviewing representations of a community's consumed content" (Appeal Br. 38; *see also* Reply Br. 5 ("the problem of being unable to quickly review relevant content that was previously consumed on a computing device"), although requiring a computer (*see* Appeal Br. 37–38; Reply Br. 3) existed prior to the Internet, having been done manually. *See* Appeal Br. 38; *see also Ultramercial*, 772 F.3d at 716–17. And, as discussed above, the purported solution automates that process using conventional computers/devices and a network operating in their normal capacities to receive, process, store, and analyze data of a specific content, and generate and present content based on the analysis. *See* Spec. ¶¶117–125.

Under the second step of the *Mayo/Alice* framework, for the reasons discussed above, we agree with and find supported the Examiner's determination that the elements of claim 14, individually or as an ordered combination, do not amount to significantly more than the above-identified

abstract idea. *See* Final Act. 9–10; Ans. 6–13. We are not persuaded of Examiner error by the Appellants' arguments that assert the opposite. *See* Appeal Br. 43–46.

Specifically, receiving, determining, storing, identifying, and filtering data of a specific content, and compiling and presenting content based on the analysis (*see* Appeal Br. 43) are well-understood, routine, and conventional functions of a generic computer, including that used to perform the method claimed. *See supra; BASCOM*, 827 F.3d at 1347–49. And, the Appellants repeat the arguments presented for claims 1 and 7 that claim 14 improves computer functionality, is analogous to example claim 4 of Example 23 of the July 2015 Update, and is analogous to *SiRF Tech.* *See* Appeal Br. 31–34. For the reasons discussed above, these arguments are not persuasive.

Thus, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 14 and of dependent claims 15 and 17–20, which rely on the same arguments presented for claim 14 (Appeal Br. 46).

Claim 16

The Appellants contend that dependent claim 16 is "patent eligible for at least all of the reasons discussed with reference to claim 14." Appeal Br. 46. The Appellants also repeat the argument presented for claim 14 that the claims are not abstract because a court has not identified a similar concept as claimed. *Id.* These arguments are not persuasive for the reasons provided above with respect to claim 14.

The Appellants further argue that:

> claim 16 is directed to an even more-specific method of basing the identifying of relevant community media units on one or more of a threshold number of times a particular media unit has been consumed in a time period and a threshold number of

> consumptions of the particular media unit in association with the friend identifiers.

Id. This argument is unpersuasive because "the abstract nature of the claims is not altered at step one by the existence of claim limitations (much less characterizations in the specification) that 'add a degree of particularity' to the implementation of the abstract idea." *In re Eberra*, 2018 WL 2077938, at *2.

In response to the Appellants' argument that the claims are "neither anticipated nor rendered obvious by any prior art, thus demonstrating that the specific limitations of claim 16 are neither routine nor conventional" (Appeal Br. 46), as discussed above with respect to claims 5, 6, and 13, we emphasize that an abstract idea does not transform into an inventive concept just because the prior art does not disclose or suggest it. *See Mayo*, 132 S. Ct. at 1304. Further, as discussed above with respect to claims 1, 7, and 14, identifying data is a well-understood, routine, and conventional function of a generic computer, including that used to perform the method claimed.

Thus, we sustain the Examiner's rejection under 35 U.S.C. § 101 of dependent claim 16.

Rejections II–VII – Obviousness — § 103(a)

Rejection II – Claims 1 and 3–6

We agree with the Appellants' contention that the Examiner does not adequately show that the prior art teaches "identifying relevant media units based on one or more consumption parameters" as defined in limitation (d) of independent claim 1, and generating a personal highlight reel including media events representative of the identified media units, as recited in limitation (e) of claim 1. Appeal Br. 49–50.

The Examiner relies on the combination of Horowitz and Dunk for teaching these limitations. *See* Final Act. 11–14; Ans. 18–19. Specifically, the Examiner finds, in relevant part, that limitation (d) of automatically computer-evaluating consumption parameters of each of the media units to identify relevant personal media units, the consumption parameters including a time at which the units was consumed by the identified user, is met by Horowitz's disclosure of a slider that permits a user to select a period of time in which first and second pluralities of media accesses took place and of an interface that provides the media access patterns of consumers in relation to the parameter to a user. *See* Final Act. 11–13 (citing Horowitz ¶ 5); Ans. 18. The Examiner further finds that Dunk teaches generating a personal highlight reel including media events representative of the relevant media units, as recited in limitation (e) of claim 1 (*see id.* at 13–14 (citing Dunk ¶¶ 61, 64, Figs. 4–8)) and determines that:

> it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the media provider system of Horowitz and the method/system for media asset with the system for providing media content of Dunk because the media player provides an efficient means for presenting and manipulating media content via a carousel on a user device ([Dunk,] Figure 5, paragraph 66).

Id. at 15; Ans. 18–19.

However, the Examiner has not adequately shown that the combination of Horowitz and Dunk teaches evaluating consumption parameters to identify relevant media units and generating content with media events that are representative of the identified relevant media units. The Examiner does not explain, such that one would readily understand, what the Examiner considers the relevant media units in Horowitz of which

media events in Dunk are representative. To the extent the Examiner considers Horowitz's media access patterns provided in response to a selected time period parameter to be the relevant media units (*see* Final Act. 12–13; Ans. 18) and Dunk's media content of a file to be the media event representative of the media unit (*see* Final Act. 14; Ans. 18), the Examiner does not explain how Dunk's media content/file is representative of the identified media access pattern. As such, one of ordinary skill in the art would not understand how the combination of Horowitz and Dunk teaches the limitations of (d) and (e) of generating content with media events representative of relevant media units identified by defined parameters, as required by independent claim 1.

Rejection III – Claims 7, 8, and 10

We agree with the Appellants' contention that the Examiner does not adequately show that the prior art teaches "automatically computer-evaluating consumption parameters of only the friend media units to identify, with the media consumption aggregator computing device, one or more relevant friend media units" and generating a highlight reel including a "collection of only friend media events representative of the one or more relevant friend media units arranged in a computer-determined viewing order," as recited in independent claim 7. *See* Appeal Br. 53, 67.

The Examiner relies on the combination of Horowitz, Crawford, and Chijiiwa for teaching these limitations. *See* Final Act. 22–24; Ans. 20–21. Specifically, the Examiner finds, in relevant part, that the limitation of automatically computer-evaluating consumption parameters of friend media units to identify relevant friend media units is taught by Crawford's disclosure of a social network server that makes available content and

automatically communicates images or videos from a first user to friends based on location information. *See* Final Act. 22–23 (citing Crawford ¶¶ 20, 26); Ans. 20. The Examiner determines that:

> it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method/system of presenting media access patterns of Horowitz and the method/system for operating a social network application of Crawford because it provides an efficient means for users to view uploaded images from their friends and associating images or a video with a user's account ([Crawford,] paragraph 21, 26).

Final Act. 23.

The Examiner further finds that Chijiiwa teaches generating a friend highlight reel including a collection of friend media events representative of the relevant friend media units, as recited in claim 7. *See* Final Act. 23–24 (citing Chijiiwa ¶¶ 46, 47, Fig, 4). The Examiner determines that:

> It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method/system of presenting media access patterns of Horowitz and the method/system for operating a social network application of Crawford with the method/system for enhanced user interaction of a social network site of Chijiiwa because it provides an efficient means for users to access friend lists and share content (images, photos, video and the like) with friends via media player modules ([Chijiiwa,] Figure 4, paragraphs 3, 37, 38, 47).

Id. at 25.

However, the Examiner has not adequately shown that the combination of Horowitz, Crawford, and Chijiiwa teaches evaluating consumption parameters of friend media units to identify relevant friend media units and generating content with only friend media events that are representative of the identified relevant friend media units. The Examiner does not explain, such that one would readily understand, what the Examiner

considers the consumption parameters of friend media units that are evaluated in Crawford, what the Examiner considers the relevant friend media units identified in Crawford, or what the Examiner considers the friend media events in Chijiiwa that are representative of the identified relevant friend media units. To the extent the Examiner considers Horowitz's media access patterns provided in response to a selected time period parameter to be the relevant media units (*see* Final Act. 12–13), the Examiner does not explain how Crawford identifies relevant friend media units based on the evaluation of the access patterns, or how Chijiiwa's media content is representative of the identified units based on the access patterns. To the extent the Examiner considers Crawford's uploading, organizing, and receiving of images/videos as the consumption parameters of friend media units (*see* Ans. 21), the Examiner does not adequately explain how Crawford identifies relevant friend media units based on the evaluation of the uploading, organizing, and receiving of images, or how Chijiiwa's media content is representative of the identified units. As such, one of ordinary skill in the art would not understand how the combination of Horowitz, Crawford, and Chijiiwa teaches the limitations of generating content with friend media events representative of relevant friend media units identified by friend consumption parameters, as required by independent claim 7.

Based on the foregoing, we do not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of independent claim 7 and of dependent claims 8 and 10.

Rejections IV and V – Claims 9 and 11–13

Claims 9 and 11–13 ultimately depend from independent claim 7. The Examiner relies on the same findings as for claim 7 for the rejection of these dependent claims. Therefore, we also do not sustain the Examiner's rejections under 35 U.S.C. § 103(a) of claims 9 and 11–13 for the same reasons discussed above with respect to claim 7.

Rejection VI – Claims 14 and 16–20

We agree with the Appellants' contention that the Examiner does not adequately show that the prior art teaches "computer-processing only the friend consumption data to identify, with the media consumption aggregator computing device, relevant community media units, based at least on a consumption frequency of the media units" and compiling a highlight reel including a "collection of only community media events representative of the filtered relevant community media units," as recited in independent claim 14. *See* Appeal Br. 61–62, 70.

The Examiner relies on the combination of Horowitz, Crawford, and Dunk for teaching these limitations. *See* Final Act. 34–37; Ans. 24. Specifically, the Examiner finds, in relevant part, that the limitation of computer-processing friend consumption data to identify relevant community media units is taught by Crawford's disclosure of a social network server that makers available content and automatically communicates images or videos from a first user to friends based on location information. *See* Final Act. 34–35 (citing Crawford ¶¶ 20, 26). The Examiner finds that Dunk also teaches this processing limitation in that Dunk teaches collecting subscriber usage information indicative of user

interests, such as how many times a video was watched or liked, communicating that information to the media service provider, determining the relevance of particular media content by scoring items using a relevance engine, and using that relevance information to affect the media content delivered to a subscriber's device. *See id.* at 35–36 (citing Dunk ¶¶ 63, 114, 129). The Examiner further finds that Dunk teaches compiling a community highlight reel including a collection of community media events representative of filtered relevant community media units. *See* Final Act. 36–37 (citing Dunk ¶¶ 61, 63, 64, 69, Figs. 4–8). The Examiner determines that:

> it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the media provider system of Horowitz and the method/system for managing a social network application account of Crawford with the system for providing media content of Dunk because the media player provides an efficient means for presenting and manipulating media content via a carousel on a user device ([Dunk,] Figure 5, paragraph 66).

Id. at 38.

However, as with claims 1 and 7, the Examiner has not adequately shown that the combination of Horowitz, Crawford, and Dunk teaches processing of friend consumption data to identify relevant community media units and generating content with only community media events that are representative of filtered identified relevant community media units. The Examiner does not explain, such that one would readily understand, what the Examiner considers the friend consumption data that are processed in Crawford and/or Dunk, what the Examiner considers the relevant community media units identified in Crawford and/or Dunk, or what the Examiner considers the community media events in Dunk that are

representative of the identified relevant community media units. To the extent the Examiner considers Horowitz's media access patterns provided in response to a selected time period parameter to be the relevant media units (*see* Final Act. 12–13), the Examiner does not explain how Crawford identifies relevant community media units based on the evaluation of the access patterns. To the extent the Examiner considers Crawford's uploading, organizing, and receiving of images/videos as the friend consumption data (*see* Final Act. 34–35; Ans. 21), the Examiner does not adequately explain how Crawford identifies relevant community media units based on the evaluation of the uploading, organizing, and receiving of images.

Further, to the extent the Examiner considers Dunk's statistics on videos watched, liked, etc. as the friend consumption data that are used to identify relevant community content that are then compiled and outputted (*see* Final Act. 35–38), the Examiner does not explain why one of ordinary skill in the art would combine Dunk's carousel of relevant content with Horowitz's presentation of access patterns and Crawford's social network. Although the Examiner provides the reason for combining the art as providing "an efficient means for presenting and manipulating media content via a carousal" (Final Act. 38), the Examiner does not adequately explain how Dunk's use of statistics combine (*see id.* at 35–38) with Crawford's social network server that receives, stores, and makes available content data (*see id.* at 32–35) and Horowitz's receiving of pattern/consumption data (*see id.* at 31–32) to make "an efficient means for presenting and manipulating media content via a carousal maps" (*id.* at 38). The Examiner does not provide sufficient articulated reasoning with rational underpinning to

support a legal conclusion of obviousness. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Based on the foregoing, we do not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of independent claim 14 and of dependent claims 16–20.

Rejection VII – Claim 15

Claim 15 depends from independent claim 14. The Examiner relies on the same findings as for claim 14 for the rejection of this dependent claim. Therefore, we also do not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of claim 15 for the same reasons discussed above with respect to claim 14.

DECISION

The Examiner's rejection of claims 1 and 3–20 under 35 U.S.C. § 101 (Rejection I) is AFFIRMED.

The Examiner's rejections of claims 1 and 3–20 under 35 U.S.C. § 103(a) (Rejections II–VII) are REVERSED.

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