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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/934,002	07/02/2013	Yue Li	3080.141US1	1483

45839 7590 06/01/2018  
Schwegman Lundberg & Woessner / LinkedIn/Microsoft  
PO BOX 2938  
MINNEAPOLIS, MN 55402

EXAMINER
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GURSKI, AMANDA KAREN

ART UNIT	PAPER NUMBER
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3623

NOTIFICATION DATE	DELIVERY MODE
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06/01/2018

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* YUE LI, SAAD HAMEED, NICOLAS DRACA, and  
VIBHU PRAKASH SAXENA

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Appeal 2017-001976<sup>1</sup>  
Application 13/934,002<sup>2</sup>  
Technology Center 3600

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Before JAMES R. HUGHES, ERIC S. FRAHM, and  
MATTHEW J. McNEILL, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–12, 14–25, and 27. Claims 13 and 26 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> We refer herein to the Appeal Brief filed February 8, 2016.

<sup>2</sup> According to Appellants, the real party in interest is LinkedIn Corporation.  
Br. 2.

*Introduction*

Appellants' application generally relates to deriving an interest score representing the likelihood that an organization will purchase a product or service. Spec. ¶ 1. The interest score can be based on combining individual interest scores of members belonging to the organization. Spec. ¶ 9. The individual interest scores are based on behavioral data of members, such as interactions with content related to a product or service. Spec. ¶ 12–13. When combining the individual interest scores, different weights are assigned to different members' scores to account for the decision-making capacities of the members within the organization. Spec. ¶ 23. If the combined interest score for the organization exceeds a certain threshold, the organization is deemed a "buying candidate," and may receive sales calls. Spec. ¶ 26.

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

1. A method comprising:

at a lead tracking and selection system, one or more hardware processors of a machine performing at least the following operations:

accessing, for a product or service, a first individual interest score of a first user and a second individual interest score of a second user, the first individual interest score and the second individual interest score being stored in a database of the lead tracking and selection system, and being determined based on interactions by the first user and the second user with one or more items of digital content related to the product or service via a first user interface of a first client device of the first user and a second user interface of a second client device of the second user;

based on member-provided employment information included in member profile information of a social networking service, determining that the first user and the second user are both current employees of an organization represented by a potential account, the potential account being identified by an account identifier stored in the database of the lead tracking and selection system;

generating, using at least one computer processor, the account interest score for the potential account, for the product or service, based on combining the first individual interest score and the second individual interest score, the first individual interest score being weighted to reflect a seniority level of the first user and the second individual interest score being weighted to reflect the seniority level of the second user, the respective seniority levels derived based on information included in the respective member profiles of the first user and the second user as maintained by the social networking service;

based on the generating of the account interest score for the potential account, updating an information element in the database of the lead tracking and selection system; and

based on the updating of the information element and on determining that the account interest score exceeds a threshold score value, selecting the potential account as a lead, the threshold score value being stored and accessed at the database of the lead tracking and selection system.

*The Examiner's Rejection*

Claims 1–12, 14–25, and 27 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

## ANALYSIS

### *Patent-Ineligible Subject Matter*

Appellants' arguments focus on the limitations of claim 1 (*see, e.g.*, Br. 13, 19–20, 22) and Appellants assert that the other claims are patent-eligible for the same reasons as claim 1, without presenting separate arguments based on specific limitations in the other claims. Br. 36. Accordingly, we treat claim 1 as representative of the claims on appeal in our analysis below. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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, 589 (2013)).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. Assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or composition of matter, the first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or

relationships. *Id.* at 2355–57. If the claim is directed to a judicial exception, such as an abstract idea, the second step is to determine whether additional elements in the claim “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* at 2355 (quoting *Mayo*, 566 U.S. at 78). This second step is described as “a search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is ‘. . . significantly more than . . . the [ineligible concept] itself.’” *Id.* at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

#### A Prima Facie Case of Patent-Ineligibility

At the outset, we note Appellants contend the Examiner failed to carry the burden of establishing a prima facie case with respect to finding the claims patent-ineligible. Br. 11–12, 14–15, 24. We disagree with Appellants.

The Federal Circuit has repeatedly explained 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 “PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in ‘notify[ing] the applicant . . . [by] stating the reasons for [its] rejection, or objection or requirement, 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) (alterations in original) (quoting 35 U.S.C. § 132). The PTO violates § 132 “when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578

(Fed. Cir. 1990). But if the PTO “adequately explain[s] the shortcomings it perceives . . . the burden shifts to the applicant to rebut the prima facie case with evidence and/or argument.” *Hyatt*, 492 F.3d at 1370.

The Examiner’s rejection under § 101 satisfies § 132 because it reflects the *Alice* analytical framework by identifying an abstract idea and finding the claims do not amount to significantly more than the abstract idea itself (*see* Final Act. 10–14), thus apprising Appellants of the reasons for the § 101 rejection under that framework. As discussed in more detail below, Appellants recognize the Examiner’s *Alice* analysis and present arguments regarding each step. *See* Br. 9–36. Appellants do not respond by alleging a failure to understand the rejection. *See id.*

#### *Alice* Step One

“The first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1335–36. “The abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1853)). “We therefore look to whether the claims . . . focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO*, 837 F.3d at 1314.

Appellants contend the Examiner fails to properly interpret the claims because the alleged abstract idea “is an Examiner-written phrase that

abstracts certain Examiner-selected limitations and omits numerous other limitations instead of conveying an understanding of all limitations of each rejected claim.” Br. 12. However, Appellants do not specifically identify any particular limitation the Examiner allegedly misinterprets. Rather, by reciting nearly all the limitations from claim 1, Appellants appear to object to the Examiner’s identifying an abstract idea that does not explicitly include all the claim limitations. *See* Br. 12–14. But while identifying an abstract idea in a patent-eligibility analysis relies on an underlying claim interpretation, an identified abstract idea is not itself a complete claim interpretation of all recited limitations. For example, in *Alice*, the Supreme Court found the claims at issue were directed to the abstract idea of “intermediated settlement,” even though this described abstract idea was much abbreviated as compared with the entirety of the representative claim. *See* 134 S. Ct. at 2352. Accordingly, we are not persuaded by Appellants’ argument that the Examiner fails to properly interpret the claims because (1) Appellants have not pointed to any particular limitations that are misinterpreted, and (2) the fact that the Examiner’s description of the identified abstract idea does not incorporate all recited claim limitations does not in itself show the Examiner fails to properly interpret the claims.

Appellants also contend the Examiner fails to show the identified abstract idea is similar to an abstract idea identified by the courts. Br. 15–17. However, in the Answer, the Examiner draws a parallel between the abstract idea identified in claim 1—“scoring a potential account comprising wholly generic computers,” or put another way, “generating a score for a potential account/sales lead” (Final Act. 12; Ans. 4)—and the abstract idea of “tracking financial transactions to determine whether they exceed a pre-

set spending limit (i.e., budgeting)” identified in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363 (Fed. Cir. 2015). See Ans. 6–8. In *Intellectual Ventures I*, the “budgeting” claim at issue required storing user transaction data and sending the data over a communication medium along with a pre-set limit for determining whether the transaction data indicated a user exceeded a pre-set limit. 792 F.3d at 1367. Similarly, claim 1 in the present case recites accessing stored data—i.e., individual interest scores based on interactions with digital content—and determining whether the combined data—i.e., an account interest score based on weighted values of the individual interest scores—exceeds a threshold. Appellants have not filed a Reply Brief rebutting the Examiner’s *Intellectual Ventures I* analogy.

Moreover, claim 1 is analogous to other Federal Circuit cases where the court found claims relating to data gathering and analysis to be directed to abstract ideas, for example, *FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1092 (Fed. Cir. 2016) (recording audit log data for protected health information, analyzing it against a rule, and providing a notification if the analysis detects misuse), *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“gathering and analyzing information of a specified content, then displaying the results”), *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (offer-based price optimization), *Versata Development Group v. SAP Am., Inc.*, 793 F.3d 1306, 1333 (Fed. Cir. 2015) (“determining a price, using organizational and product group hierarchies”), *Digitech Image Technologies, LLC v. Electronics For Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (employing “mathematical algorithms to manipulate existing information to generate additional information”), and *Accenture Global Services, GmbH v.*

*Guidewire Software, Inc.*, 728 F.3d 1336, 1344–46 (Fed. Cir. 2013)  
(generating tasks based on rules in response to events).

Further, claim 1 is also analogous to patent-ineligible claims falling into the category of advertising, marketing, and sales activities. For example, in *In re Maucorps*, the claimed invention that was directed to an abstract idea under § 101 determined “the optimum number of times a sales representative for a business should visit each customer over a period of time.” 609 F.2d 481, 482 (CCPA 1979). Similarly, claim 1 in this case determines whether a potential account is a sales lead, i.e., whether a potential account should be contacted. *See* Spec. ¶ 26 (“[A] number of accounts or a top percentage of the total number of accounts may be identified as buyer candidates to receive sales calls”).

The above analysis analogizes the abstract idea in claim 1 to abstract ideas identified in other cases that can be generally categorized as certain methods of organizing human activities. Appellants contend, however, that the claims “**are not directed to one of the certain methods of organizing human activity that are patent-ineligible**” (Br. 28) because the claims are “directed to human operation of *computer systems* in a manner that is new, useful, and non-obvious” and the “claims do not manage relationships or transactions between people, address legal obligations, or relate to advertising, marketing, or sales activities.” Br. 29. We are not persuaded by these arguments.

First, we note that rather than consider whether a claim is new and non-obvious in a patent-eligibility analysis, *see Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a *new* abstract idea is still an abstract idea.”), we look at whether the claim is

directed to a technological improvement. *See McRO*, 837 F.3d at 1314; *Enfish*, 822 F.3d at 1335–36. Here, claim 1 is focused on generating a score and determining whether the score exceeds a threshold to select a sales lead, and not on any specific improvement to computer technology for performing the claimed steps.

Second, as discussed above, claim 1 is similar to claims in other cases that courts have found to be directed to abstract ideas relating to data gathering and analysis, and advertising, marketing, and sales activities. Accordingly, we agree with the Examiner (Final Act. 12) and find claim 1 is directed to an abstract idea.

#### *Alice* Step Two

The second step in the *Alice* analysis requires a search for an “inventive concept” that “must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (2016). There must be more than “computer functions [that] are ‘well-understood, routine, conventional activit[ies]’ previously known to the industry.” *Alice*, 134 S. Ct. at 2359 (second alteration in original) (quoting *Mayo*, 566 U.S. at 73).

Appellants contend the claimed elements, considered individually and in combination, amount to significantly more than the abstract idea. Br. 17–24, 31–34. We disagree. Claim 1 recites no more than conventional uses of computers, for example, interacting with content through user interfaces of client devices, storing data in databases, and generating a score, i.e., performing a calculation. “[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise

ineligible claim patent-eligible.” *DDR Holdings, LLC, v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014). In other words, “the use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning IP*, 839 F.3d at 1096. Further, the combination of limitations in claim 1 does not amount to a non-conventional arrangement of conventional pieces, as in *Bascom*. See 827 F.3d at 1350. Rather, the result of performing the steps in claim 1 is no more than the sum of its parts. Claim 1 accesses individual interest scores, generates an account interest score by combining weighted values of the individual interest scores, and determines whether the account interest score exceeds a threshold score value. This process is straightforward and similar to other sequential computer-based data manipulations found to be patent-ineligible. See, e.g., *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada*, 687 F.3d 1266, 1279–80 (Fed. Cir. 2012) (“The asserted claims require determining values . . . and then ‘storing,’ ‘removing,’ and/or ‘accumulating’ some of those values. As the formulae in the specification indicate, the determination of those values, and their subsequent manipulation, is a matter of mere mathematical computation.”) (citation omitted).

We are also not persuaded by Appellants’ argument (Br. 34–35) that the claims are similar to those in *DDR Holdings*, where the Federal Circuit found “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” 773 F.3d at 1257. Here, the problem addressed by claim 1 is related to identifying quality sales leads (*see* Spec. ¶ 4), not the functioning of computers. Further, the claimed solution merely uses computers to make

more efficient a process that could otherwise be performed by a human. Accordingly, claim 1 represents the type of patent-ineligible claim the court in *DDR Holdings* admonished against. *See* 773 F.3d at 1256 (reviewing prior cases and noting that, “[a]lthough many of the claims recited various computer hardware elements, these claims in substance were directed to nothing more than the performance of an abstract business practice on the Internet or using a conventional computer”).

Additionally, we note that Appellants contend “the claims do not preempt the entire field of ‘generating a score for a potential account/sales lead.’” Br. 25. However, while preemption is the concern that drives the exclusionary principle of judicial exceptions to patent-eligible subject matter, *Alice*, 134 S. Ct. at 2354, preemption is not a separate test of patent-eligibility, but is inherently addressed within the *Alice* framework. *See Ariosa Diagnostics, Inc., v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”).

Accordingly, we agree with the Examiner (Final Act. 12–14) and find claim 1 does not amount to significantly more than the abstract idea itself. We are, therefore, not persuaded the Examiner erred in rejecting claim 1, and claims 2–12, 14–25, and 27 grouped therewith, as patent-ineligible.

## CONCLUSION

Appellants have not persuaded us of error in the Examiner’s rejection of claims 1–12, 14–25, and 27 under 35 U.S.C. § 101.

Appeal 2017-001976  
Application 13/934,002

DECISION

The decision of the Examiner to reject claims 1–12, 14–25, and 27 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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED