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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* ROBERT THOMAS BORUCKI  
and RICHARD VARWELL TOWNSEND

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Appeal 2017-002774  
Application 13/663,711  
Technology Center 3600

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Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and  
BIBHU R. MOHANTY, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE<sup>1</sup>

Robert Thomas Borucki and Richard Varwell Townsend (“Appellants”) seek review under 35 U.S.C. § 134 from a Non-Final Rejection of claims 1–21, the only claims pending in the Application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Our Decision will make reference to the Appellants’ Appeal Brief (“Br.,” filed August 4, 2016) and the Examiner’s Answer (“Ans.,” mailed October 6, 2016), and Non-Final Action (“Non-Final Act.,” mailed March 24, 2016).

The Appellants invented a form of electronic advertising, and more particularly, injecting an advertisement into a mobile document displayed on a mobile device. Spec., para. 1.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A computer implemented method for injecting an advertisement into a mobile document, the method comprising:

[1] receiving a mobile document request from a mobile device via a network,

wherein the request includes information uniquely identifying a mobile document and information about the mobile device;

[2] receiving a digital advertisement selected to be relevant to the requested mobile document;

[3] adjusting the display size of the advertisement,

through execution of instructions on a processor with regard to the received digital advertisement and

based on the size of the display of the mobile device and a predetermined layout for the requested mobile document;

[4] generating an optical code

using information about the requested mobile document wherein the display size of the generated optical code is based on the size of the display of the mobile device and the predetermined layout for the requested mobile document;

and

[5] transmitting, via the network and in response to the received mobile document request,

a mobile document formatted according to the predetermined layout for the requested mobile document to the mobile device

wherein the mobile document includes the size adjusted advertisement and the generated optical code.

The Examiner relies upon the following prior art:

Behr US 2008/0262929 A1 Oct. 23, 2008

Moukas US 2011/0022473 A1 Jan. 27, 2011

Claims 1–21 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Behr and Moukas.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of obviousness turn primarily on whether the references describe generating an optical code that is transmitted.

## FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

*Facts Related to Claim Construction*

01. The disclosure contains no lexicographic definition of “optical code.”
02. The term “optical code” is not recognized as a term of art.
03. The plain meaning of “optical code” is a code modified by a characteristic that is in some sense optical.

*Facts Related to Appellants’ Disclosure*

04. Mobile devices usually have small displays when compared to standard size computer displays and laptop displays. Additionally, different makes and models of mobile devices have different size displays with different resolutions making it difficult to display the same size document on each display. The small displays of the mobile devices also restrict how much information a mobile document can display. Typically, a mobile document includes an optical code, such as a barcode, that is displayed on the mobile device and can be presented for scanning. Spec., para. 4.
05. The term optical code includes machine-readable indicia that includes, but is not limited to, one-dimensional barcodes and two-dimensional barcodes. *Id.* at para. 21.

*Facts Related to the Prior Art*

*Behr*

06. Behr is directed to providing wireless advertising and information services to mobile device users. Behr, para. 2.

07. Behr describes a web-based content management server that is adapted to transmit advertisements and other informational content on-demand to one or more mobile device users. The content management server adjusts the format of the advertisements and other informational content sent to the user's mobile device based at least in part on the browser capabilities of the mobile device and/or the user's preferences. Behr, para. 7.
08. Behr describes requesting advertising information using a mobile device equipped with an automatic bar-code reader. A mobile device user views an advertisement containing a unique bar-code associated with the advertised product or service. The user may then take a photograph of the bar-code with the mobile device. The mobile device converts the photographed bar-code into a unique number, which is then transmitted along with the user's identifying information to the content management server requesting that the selected advertisement be delivered to the user's mobile device. *Id.* at para. 80.

*Moukas*

09. Moukas is directed to marketing and advertising to mobile devices. Moukas, para. 2.
10. Moukas describes a method for reserving a transaction comprising the steps of offering a transaction over a mobile device communication link using a mobile marketing device platform, receiving a response to the offer of the transaction by way of the mobile communication device link, generating a scannable identifier

as a confirmation of receiving the response to the offer, and wirelessly transmitting the scannable identifier over the mobile communication device link for processing by a decoding device as proof of confirmation. Additional aspects of the embodiment include the offered transaction being the sale of a product or a sale of tickets to an event. According to another feature, the response to the offered transaction is the purchase of a product or service, or the purchase of tickets to an event. The scannable identifier may include a 2-D barcode. Further, the method may include pre-registering for notice of the transaction. Moukas, para. 10.

11. Moukas describes an apparatus for reserving a transaction over a mobile device link comprising a mobile marketing platform with a transmitter for offering a transaction over a communication link and a barcode generator for generating a barcode as a confirmation of receiving the response to the offer. The transmitter transmits the barcode using a wireless protocol and decoding of the barcode serves as proof of confirmation. *Id.* at para. 11.
12. Moukas describes a repository with mobile device capabilities such as rendering language, image size, supported file extensions that are used for the correct rendering of pages served to each specific mobile device. A banner manager 330 is responsible managing ad banners and their placement in external WAP sites, as well as serving the appropriate banner to WAP pages of such sites, when a request comes. *Id.* at para. 76.

13. Moukas describes a reservations-enquiry system in conjunction with the mobile marketing platform, utilizing a method for end-customers of retail-shops/chains with mobile handsets via mobile SMS/MMS messaging services to acquire information about products availability in retail shops inventory based on retail-stores catalogue numbers. Embodiments further allow end-customers to reserve available products in retail-shops for future purchases over the counter using either simple reservation identification strings or MMS-encoded images of 2D scannable identifiers such as barcodes. The system allows for users of mobile handsets with SMS/MMS messages services enabled to inquire about the availability of certain products by sending SMS messages to a predefined mobile messaging service point including the catalogue product ID in question and, optionally, the retail-shop identification number. Further, the reservation and scannable identifier aspects of the invention further allow a mobile device user to receive information for product availability from the system by means of one-or-more SMS messages containing information about the availability of the requested product, including the location of stores and the number of current inventory for the product. Moukas, para. 160.
14. Moukas describes receiving a reservation ticket in the form of a string ID or 2D bar-code via SMS/MMS in case of a successful reservation request, that can be used as proof of reservation in retail stores. According to one embodiment, two types of proofs of purchase are provided in forms of reservation IDs: a) a unique string up to 160 characters based on the GSM 3.38 character set

delivered as a single SMS message; and b) a 2D-barcode image delivered in the form of an MMS message. These reservation IDs can be used with corresponding readers in retail stores to confirm a reservation for a predefined time period. Any known scannable identifiers, such as 2D-bar codes, Aztec Code, bCode, Data Matrix, may be utilized. In some embodiments, the reservation ticket message (SMS/MMS) is accompanied by a second informational SMS message informing the user that reservation has been successful with details of the reservation (product ID, description, price, store location, and expiration date). Moukas, para. 162.

15. Moukas describes administration of a scannable, identifier-based advertising campaign or activity. The mobile marketing platform may be linked to the advertiser's retail operations, allowing the targeted audiences of the advertising campaign to view, purchase and otherwise interact with a retailer in an electronic marketplace. Specifically, administrative users of the system can update a catalogue of offered products, update the list of retail-store locations and identification number, enable/disable information/reservation SMS/MMS services for specific catalogue products and/or retail/stores, define whether a reservation for a specific product will be delivered via SMS string message or MMS 2D-barcode, view statistics on the popularity of enquiries and reservations of products via SMS/MMS service and other functionalities as embodied in different system implementations. Moukas, para. 163.

16. Moukas describes a Mobile Inventory Reservation System (“MIRS”) that receives SMS from consumers and translates them to RCIS requests, receives RCIS responses to inquiries and translates to informational SMS messages relayed to the consumers, and receives RCIS responses to reservations requests and translates reservation IDs to 1D encrypted string or 2D barcode images. The translated reservation IDs are relayed to the end-user. *Id.* at para. 170.

#### ANALYSIS

We initially take up the matter of claim construction as it pertains to the interpretation of the phrase “optical code.” This is not lexicographically defined, nor is it a recognized term of art, and its plain meaning is a code modified by a characteristic that is in some sense optical. The Specification at paragraph 4 states that its scope encompasses machine-readable indicia that includes, but is not limited to, one-dimensional barcodes and two-dimensional barcodes. Therefore, we construe an optical code to mean a code modified by a characteristic that is in some sense optical and that includes within its scope machine-readable indicia. Thus, the characteristic modifying “code” includes within its scope the attribute of being machine readable. As a practical matter, given the notoriety and ubiquity of optical character recognition, this encompasses the standard ASCII character set of letters and numbers. This construction also encompasses the bar codes both of the applied references describe.

*Claims 1–21 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more*

Method claim 1 recites receiving a mobile document request, receiving a digital advertisement, adjusting the display size of the advertisement, generating a code, and transmitting the document, advertisement, and code. Thus, claim 1 recites receiving, analyzing, modifying, generating, and transmitting. None of the limitations recite implementation details for any of these steps, but instead recite functional results to be achieved by any and all possible means. Data reception, analysis and modification, and display are all generic, conventional data processing operations to the point they are themselves concepts awaiting implementation details. The sequence of data reception—analysis—modification—generation—transmission is equally generic and conventional. The ordering of the steps is, therefore, ordinary and conventional. The remaining claims merely describe process parameters, with no implementation details.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, we then ask, “[w]hat else is there in the claims before us? . . . To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. . . . [The Court] described step two of this analysis as a 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 Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent–ineligible concept. The Examiner finds the claims directed to receiving a digital advertisement selected to be relevant to the requested mobile document, which is a fundamental advertising practice that falls under an economic objective or practice rather than a technological one. Non-Final Act. 6.

Although the Court in *Alice* made a determination as to what the claims were directed to, we find that this case’s claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 1 recites that it is a method for injecting an advertisement into a mobile document. The steps in claim 1 result in transmitting a mobile document with a size adjusted advertisement. The Specification at paragraph 1 recites that the invention relates to electronic advertising, and more particularly, injecting an advertisement into a mobile document displayed on a mobile device. Thus, all this evidence shows that claim 1 is directed to placing an advertisement in a mobile document that also includes some code, i.e. advertisement insertion. This is consistent with the Examiner’s finding.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v. Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of advertisement insertion is a fundamental business practice long prevalent in our system of commerce. The use of advertisement insertion is also a building block of ingenuity in marketing and promotion. Thus, advertisement insertion, like hedging, is an “abstract idea” beyond the scope of § 101. *See Alice*, 134 S. Ct. at 2356.

As in *Alice*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of advertisement insertion at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See id.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent-ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, modification, generation, and transmission and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v.*

*Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 1 is directed to the abstract idea of receiving, analyzing, modifying, generating, and transmitting data.

The remaining claims merely describe process parameters. We conclude that the claims at issue are directed to a patent–ineligible concept.

The introduction of a computer into the claims does not alter the analysis at Mayo step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice*, 134 S. Ct. at 2358 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Receiving, analyzing, modifying, generating, and transmitting data amounts to electronic data query and retrieval—one of the most basic functions of a computer. That the code is an optical code does not change this determination. First, the code is not rendered in the claim, and the technical details of such generation are not recited. Therefore, the limitation is functionally no more than code generation. Second, the Specification at paragraph 4 admits that embedding an optical code in a document is conventional. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., supra*; *see also In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am. Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellants’ method add nothing that is not already present when the steps are considered separately. The sequence of data receiving, analyzing, modifying, generating, and transmitting is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772

F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission); *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is, therefore, ordinary and conventional.

Viewed as a whole, Appellants' method claims simply recite the concept of advertisement insertion as performed by a generic computer. To be sure, the claims recite doing so by advising one to do so in the context of a mobile device and size the ad, including some content code, accordingly. But this is no more than abstract conceptual advice on the parameters for such advertisement insertion and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The 21 pages of Specification spell out different generic equipment<sup>2</sup> and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of advertisement insertion under different scenarios. They do not describe any particular improvement in the manner a

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<sup>2</sup> The Specification describes using a personal computer and tablet computer or smart phone. Spec., paras. 24–25.

computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of advertisement insertion using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

As to the structural claims, they are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] . . . against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

*Id.* at 2360.

We are not persuaded by Appellants’ argument that when considering the claim as a whole, the claim is actually directed to providing not only a digital advertisement, but also a requested mobile document as well as generating and providing an optical code where the optical code is generated using information about the requested mobile document. So there are really three elements that are provided. A mobile document, an advertisement that is relevant to the mobile document, and an optical code that is generated based on information about the requested mobile document. This is not only in a different context than the asserted abstract idea, but also is much less abstract.

Br. 7–8. That three elements of data are provided is immaterial to what the claim is directed to, as the document, ad, and code are all data provided for assembly on a screen. The code is not part of the ad, and, as the airline boarding pass in the Specification exemplifies, is part of the complete document onto which the ad is to be inserted. As such, the claims are

directed to the abstract conceptual advice of inserting an ad onto a document that includes some optical code, the inclusion of the optical code being known to be conventional.

Appellants further argue that the asserted claims are akin to the claims found patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). Br. 8. In *DDR Holdings*, the Court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *Id.* at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *Id.* at 1258. The Court cautioned, however, “that not all claims purporting to address Internet-centric challenges are eligible for patent.” *Id.* For example, in *DDR Holdings* the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. *See id.* at 1258–59 (citing *Ultramercial*, 772 F.3d at 715–16). As noted there, the *Ultramercial* claims were “‘directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.’” *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 715–16). Nevertheless, those claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.*

Appellants' asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited "providing [a] media product for sale at an Internet website;" "restricting general public access to said media product;" "receiving from the consumer a request to view [a] sponsor message;" and "if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query." *Ultramercial*, 772 F.3d at 712. Similarly, Appellants' asserted claims recite receiving, analyzing, modifying, generating, and transmitting data. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are not persuaded by Appellants' argument that "the sizing of the generating of the optical code based on the size of the display of the mobile device as claimed is a very concrete, as opposed to abstract, solution to a problem that exists specifically in the context of mobile devices." Br. 9. Appellants do not recite any technological implementation details for how the generation is performed, or how the generation is based on the size of the display and, therefore, the limitation of basing on size is abstract conceptual advice for a result to be achieved by any and all possible means.

Affinity contends that the '085 patent embodied a concrete technological innovation because, as of its priority date (March 28, 2000), wireless streaming of media was not "routine, conventional, or well-known." The patent, however, does not disclose any particular mechanism for wirelessly streaming content to a handheld device. The specification describes the function of streaming content to a wireless device, but not a specific means for performing that function. Claim 14, in turn, recites (1) a "media managing system" that maintains a library

of content, (2) a “collection of instructions” that are “operable when executed” by a handheld wireless device to request streaming delivery of the content, and (3) a “network based delivery resource” that retrieves and streams the requested content to the handheld device. At that level of generality, the claims do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution to an identified problem. The purely functional nature of the claim confirms that it is directed to an abstract idea, not to a concrete embodiment of that idea.

*Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016). More critically, the claims do not recite actually rendering the code, leaving the limitation of being based on size aspirational rather than functional.

*Claims 1–21 rejected under 35 U.S.C. § 103(a) as unpatentable  
over Behr and Moukas*

We are not persuaded by Appellants’ argument that the claimed transmitting is of a mobile document that includes the size adjusted advertisement and the generated optical code. Review of paragraph [0080] of Behr reveals that what is described is the scanning of a barcode on a mobile device and then retrieving content based on data included in the scanned barcode. The results is that the content management server delivers the selected advertisement based on the barcode. There is no mention of the barcode, or an optical code as claimed, being transmitted back to the mobile device or the generation of a barcode, or an optical code as claimed, that is provided to the mobile device with the advertisement.

Br. 10. As the Examiner responds

Moukas teaches generating of the barcode, whereas Behr teaches the transmission of the bar code. In regards to generating the barcode, Examiner has added Paragraphs [0011]

and [0170] of Moukas for more clarification (In addition to the originally cited Paragraph [0162]). Paragraph [0011] of Moukas discloses “the invention includes an apparatus for reserving a transaction over a mobile device link comprising a mobile marketing platform with a transmitter for offering a transaction over a communication link and a barcode generator for generating a barcode as a confirmation of receiving the response to the offer”. Paragraph [0162] of Moukas discloses more detail about the reservation system. Paragraph [0170] discloses the barcode generator in more detail: “Mobile Inventory Reservation System (‘MIRS’) receives SMS from consumers and translates them to RCIS requests, receives RCIS responses to inquiries and translates to informational SMS messages relayed to the consumers, and receives RCIS responses to reservations requests and translates reservation IDs to 1 D encrypted string or 2D barcode images. Regarding transmission of the barcode, Paragraph [0080] of Behr discloses “[R]equesting advertising information using a mobile device equipped with an automatic bar-code reader. The method may begin generally at block 164, when the mobile device user 16, 18, 20 views and advertisement containing a unique bar-code associated with the advertised product or service. Once the mobile device user 16, 18, 20 views the advertisement, the user may then take a photograph of the bar-code with the mobile device, as indicated generally at block 166. The mobile device can then be configured to convert the photographed bar-code into a unique number (block 168), which can then be transmitted (block 170) along with the user’s identifying information to the content management server 14 requesting that the selected advertisement be delivered to the user’s mobile device.” In this case, “transmitting, via the network and in response to the received mobile document request”, is disclosed in Behr as “[R]equesting advertising information using a mobile device equipped with an automatic bar-code reader” and “a mobile document formatted according to the predetermined layout for the requested mobile document to the mobile device wherein the mobile document” is disclosed in Behr as “[T]he mobile device user 16,18,20 views [an] advertisement containing a unique bar-code associated with the advertised

product or service . . . . [T]he user may then take a photograph of the bar-code with the mobile device . . . . The mobile device can then be configured to convert the photographed bar-code into a unique number (block 168), which can then be transmitted (block 170) along with the user's identifying information to the content management server 14 requesting that the selected advertisement be delivered to the user's mobile device."

Ans. 3–4 (emphasis omitted). We agree with the Examiners findings and determination.

#### CONCLUSIONS OF LAW

The rejection of claims 1–21 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more, is proper.

The rejection of claims 1–21 under 35 U.S.C. § 103(a) as unpatentable over Behr and Moukas is proper.

#### DECISION

The rejection of claims 1–21 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. § 1.136(a)(1)(iv) (2011).

AFFIRMED