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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* ANDREW LONGTINE and SARA STROIK

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Appeal 2017-002826  
Application 13/632,568  
Technology Center 3600

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Before JOHN A. JEFFERY, JOHN P. PINKERTON, and  
SCOTT B. HOWARD, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 1–5 and 7–10. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention generates dynamic messages to market products, such as insurance. In one implementation, when a customer buys a particular travel-related product from a partner site, a message is sent to a provider that sells related products, including travel insurance. Spec. ¶¶ 36–

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<sup>1</sup> Appellants identify the real party in interest as American International Group, Inc. Br. 1.

37; Fig. 1. After receiving the message, the provider accesses a database to retrieve content for a “return message” that can be related to that particular customer’s purchased travel product. Spec. ¶¶ 38–40. This return message, which also includes a price quotation, is sent to the partner site and relayed to the customer. Spec. ¶¶ 51–54; Fig. 3. Claim 1 is representative:

1. A system for dynamic messaging comprising:
  - a physical computer-readable medium having computer-executable instructions stored thereon, the computer-executable instructions comprising a dynamic messaging program including computer executable instructions comprising a user interface module, a message-content determining module, a product price calculating module, and a factor group lists sub-module;
  - a processor adapted to execute the dynamic messaging program contained on the physical computer-readable medium;
  - a physical computer-readable medium having computer-executable instructions stored thereon, the computer-executable instructions comprising a web-enabled interface module executably arranged with the processor, the web-enabled interface module adapted to exchange information with a partner site over the internet; and
  - a data storage device operably arranged with the processor, the data storage device containing a plurality of message-contents relating to a plurality of travel insurance products;wherein the product price calculating module includes computer executable instructions adapted to calculate a price quotation for a travel insurance product based upon information received from the partner site through the web-enabled interface module, the information relating to a travel product selected on the partner site by a customer, and the message-content determining module includes computer executable instructions adapted to select, based upon the information relating to the travel product selected on the partner site by the customer, at least one message-content related to the travel product from the message-contents stored in the data storage device, and wherein

the factor group lists sub-module is adapted to allow a user to create through the user interface module a list of message-contents that are classified according to a data field parameter received in the information relating to the travel product selected on the partner site by the customer.

#### THE REJECTION

The Examiner rejected claims 1–5 and 7–10<sup>2</sup> under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 8–9.<sup>3</sup>

#### CONTENTIONS

The Examiner finds that the claimed invention is directed to an abstract idea, namely providing insurance products—a fundamental economic practice. Final Act. 8–9. According to the Examiner, the claimed elements do not add significantly more to the abstract idea because, among other things, the claims recite generic computing functionality that performs the recited fundamental economic practice. Final Act. 9; Ans. 2–9. Based on these findings, the Examiner concludes that the claims are ineligible under § 101.

Appellants argue that claim 1 recites specific physical equipment configured to exchange information over the internet to select dynamic messages. Br. 4. According to Appellants, claim 1 satisfies the machine-or-transformation test by including the recited processor, web-enabled interface

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<sup>2</sup> Although the Examiner includes cancelled claims 11, 12, 14, and 15 in the rejection (Final Act. 8), we nonetheless omit those claims here for clarity, and treat the Examiner’s error in this regard as harmless.

<sup>3</sup> Throughout this opinion, we refer to (1) the Final Rejection mailed February 26, 2015 (“Final Act.”); (2) the Appeal Brief filed February 23, 2016 (“Br.”); and (3) the Examiner’s Answer mailed July 29, 2016 (“Ans.”).

module, and data storage device operably arranged with the processor. Br. 5. Appellants add that the claimed invention is rooted in computer technology to satisfy persistent needs arising in the field of travel insurance sales over the internet by providing tailored information responsive to information provided by a customer over the internet. Br. 6. Appellants also argue that the limitations of claims 3 and 4 further link the claimed system to the recited functionality to help increase marketability of travel insurance products for which quotes are delivered. Br. 7–8.

#### ISSUE

Has the Examiner erred in rejecting claims 1–5 and 7–10 by concluding that they are directed to ineligible subject matter under § 101? This issue turns on whether the claimed invention is directed to a patent-ineligible abstract idea and, if so, whether the claim’s elements—considered individually and as an ordered combination—transform the nature of the claim into a patent-eligible application of that abstract idea.

#### ANALYSIS

To determine whether claims are patent eligible under § 101, we apply the Supreme Court’s two-step test articulated in *Alice Corp. Proprietary Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014). First, we determine whether the claims are directed to a patent-ineligible concept: laws of nature, natural phenomena, and abstract ideas. *Id.* at 2354–55. If so, we then proceed to the second step and examine the claim’s elements—both individually and as an ordered combination—to determine whether the claim

contains an “inventive concept” sufficient to transform the claimed abstract idea into a patent-eligible application. *Id.* at 2357.

*Alice Step One*

Applying *Alice* step one, we are not persuaded of error in the Examiner’s finding that the claimed invention is directed to an abstract idea, namely, creating messages to promote insurance products to a customer—a fundamental economic practice. *See* Final Act. 8–9.

Independent claim 1 recites a dynamic messaging system that comprises, among other things, various modules for performing specified functions, where a “product price calculating module,” can calculate a price quotation for a travel insurance product based on information received from a partner site through a web-enabled interface module, where the information relates to a travel product that a customer selects on the partner site. The claim further recites a “message-content determining module” that selects “message-content” related to the travel product from a data storage device. Lastly, the claim recites a “factor group lists sub-module” that allows a user to create a list of “message-contents” that are classified according to a data field parameter in the received information.

According to Appellants’ Specification, when a customer buys a particular travel-related product from a partner site 102, a message is sent to provider 100 that sells products related to those offered by the partner sites, including travel insurance. Spec. ¶¶ 36–37; Fig. 1. After receiving the message, the provider accesses a database to retrieve content for a “return message” that can be related to that particular customer’s purchased travel product. Spec. ¶¶ 38–40. This return message, which also includes a price

quotation, is sent to the partner site and relayed to the customer. Spec. ¶¶ 51–54; Fig. 3.

As noted in the Specification’s paragraph 60, users can create or modify lists of message-contents that are classified or organized according to various parameters received from incoming requests. Thus, users can create reusable messages lists that are stored in a database for use when messages are dynamically constructed. Spec. ¶ 60.

In essence, the system of claim 1 enables: (1) calculating a price for travel insurance related to a travel product selected by a customer at a partner site; (2) selecting particular content for a message related to that product; and (3) creating a list of particular items of content that are classified according to received parameters.

Despite Appellants’ arguments to the contrary (Br. 5–7), we agree with the Examiner that claim 1 is directed to an abstract idea, namely, creating messages to promote insurance products to a customer, given that the recited dynamic messaging system is directed to that end and, therefore, a fundamental economic practice as the Examiner indicates. Final Act. 9. Such fundamental economic and business practices are often held to be abstract. *See, e.g., Alice*, 134 S. Ct. at 2356 (holding the concept of intermediated settlement is an abstract idea directed to a “fundamental economic practice long prevalent in our system of commerce” (citation omitted)); *see also buySAFE v. Google, Inc.*, 765 F.3d 1350, 1353–54 (Fed. Cir. 2014) (citing cases where contractual relations at issue constituted fundamental economic practices, and noting that forming or manipulating economic relations may involve an abstract idea); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347

(Fed. Cir. 2014) (explaining that claims directed to “the mere formation and manipulation of economic relations” and “the performance of certain financial transactions” have been held to involve abstract ideas).

Furthermore, it well settled that collecting information is within the realm of abstract ideas—even when the information is limited to particular content. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). It is also well settled that analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, is essentially a mental process within the abstract idea category. *Id.* at 1354. And merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. *Id.*

Similar to the claims at issue in *Electric Power*, the claimed invention here gathers, manipulates, analyzes, and presents information of a specified content, but does not use any particular inventive technology for performing those functions. *Cf. Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1047, 1054–56 (Fed. Cir. 2017) (holding claims reciting system for generating financing packages based on financial information received from a user terminal via a network for presenting financing terms to the user for immediate purchase were directed to an abstract idea); *see also EasyWeb Innovations, LLC v. Twitter, Inc.*, 689 F. App’x 969, 969–71 (Fed. Cir. 2017) (non-precedential) (holding claims reciting message publishing system that (1) converted part of a received message to a different format, and (2) published the converted portion were directed to the abstract idea of receiving, authenticating, and publishing data).

That Appellants' claimed invention calculates a price quotation based on received information does not make the recited abstract idea less abstract. *See OIP Techs. v. Amazon.com, Inc.*, 788 F.3d 1359, 1361–63 (Fed. Cir. 2015) (holding that method of pricing a product for sale using offer-based price optimization was directed to an abstract idea). We reach the same conclusion regarding the user's ability create a list of particular items of content that are classified according to received parameters, for it is well settled that classifying and storing data in an organized manner is likewise an abstract idea. *See TLI Comm., LLC v. AV Auto., LLC*, 823 F.3d 607, 610, 613 (Fed. Cir. 2016).

In short, the claimed invention is directed to creating messages to promote insurance products to a customer—a fundamental economic and business practice. Even assuming, without deciding, that the claimed invention enhances the customer's shopping experience and increases travel insurance sales as Appellants contend (Br. 6), that does not change the fact that the claimed invention is, in essence, directed to a fundamental business practice and, therefore, an abstract idea. A claim for a useful or beneficial abstract idea is still an abstract idea. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379–80 (Fed. Cir. 2015).

We, therefore, agree with the Examiner that claim 1 is directed to an abstract idea.

#### *Alice Step Two*

Nor do the recited elements—considered individually and as an ordered combination—transform the nature of claim 1 into a patent-eligible

application of the abstract idea to ensure that the claim amounts to significantly more than that idea. *See Alice*, 134 S. Ct. at 2357.

That the recited dynamic messaging system includes (1) computer-readable media with computer-executable instructions, (2) a processor, and (3) a data storage device does not change our conclusion. As the Examiner indicates, the claimed invention merely uses generic computing components to perform the recited abstract idea. Final Act. 9; Ans. 4–6. Indeed, these generic computing components merely do that which can be performed mentally or with a pen and paper—exclusive mental functions ineligible for patent protection under § 101. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011).

Even assuming, without deciding, that the recited components add efficiency, any speed increase comes from the capabilities of the generic computer components—not the recited process itself. *See FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.” (quoting *Bancorp Servs., LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012))). Like the claims in *FairWarning*, the focus of claim 1 is not on an improvement in computer processors as tools, but on certain independently abstract ideas that use generic computing components as tools. *See FairWarning*, 839 F.3d at 1095 (citations and quotation marks omitted); *accord* Ans. 9 (noting that the claimed invention uses existing technology to solve a business problem—not a technical problem).

In short, merely reciting these generic computing components cannot transform a patent-ineligible abstract idea into a patent-eligible invention. *Alice*, 134 S. Ct. at 2358. In other words, merely reciting an abstract idea while adding the words “apply it with a computer” does not render an abstract idea non-abstract: there must be more. *See id.* at 2359. Nor does the claimed invention improve the computer processor device’s functionality or efficiency, or otherwise change the way that device functions. *Cf. Enfish LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016).

Nor do we find availing Appellants’ contention that claim 1 satisfies the machine-or-transformation test. Br. 5. The machine-or-transformation test, although not the only test, can nevertheless provide a “useful clue” in the second step of the *Alice* framework. *Ulramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (quoting *Bilski v. Kappos*, 561 U.S. 593, 604 (2010)). Under the machine-or-transformation test, a claimed *process* is patent-eligible if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. *In re Bilski*, 545 F.3d 943, 954 (Fed. Cir. 2008), *aff’d sub nom. Bilski v. Kappos*, 561 U.S. 593 (2010).

Our emphasis underscores that the machine-or-transformation test applies to claimed *processes*—a category of subject matter under § 101 that is distinct from the dynamic messaging *system* recited in claim 1 that falls within the apparatus category in that statute. Nevertheless, Appellants’ contention that (1) the recited processor, web-enabled interface module, and data storage device recite a particularly-programmed machine, and (2) using these features “breathes life and meaning” into the claims (Br. 5) falls well short of proving that these features add significantly more to the recited

abstract idea by improving these elements' functionality or efficiency, or otherwise change the way they function. *Cf. Enfish*, 822 F.3d at 1335. As noted previously, these elements merely use generic computing components to implement the recited abstract idea.

For the foregoing reasons, the recited elements—considered both individually and as an ordered combination—do not contain an “inventive concept” sufficient to transform the claimed abstract idea into a patent-eligible application. Therefore, we are not persuaded that the Examiner erred in rejecting claim 1, and claims and 2, 5, and 7–10 not argued separately with particularity.

#### *Claims 3 and 4*

We also sustain the Examiner's rejection of claim 3 reciting that the dynamic messaging system is adapted to send (1) the price quotation information, and (2) the selected message-content to the partner site through the web-enabled interface. Claim 4 adds that these two data elements are combined and sent to the partner site as a message packet.

Even assuming, without deciding, that these additional features further link the claimed system to the functionality of claim 1 that helps increase the marketability of the travel product for which a quote is delivered as Appellants contend (Br. 7), the fact that the recited data is combined and sent through a web-enabled interface as a packet does not add significantly more to the abstract idea. It is well settled that sending and receiving packetized data via a network, such as the internet, is conventional generic computing functionality. *See buySAFE*, 765 F.3d at 1355 (“That a computer receives and sends the information over a network—with no further

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specification—is not even arguably inventive.”); *accord* Ans. 10–12 (noting generic computing functionality in the Specification and noting the claimed invention does not improve computing technology).

Therefore, we are not persuaded that the Examiner erred in rejecting claims 3 and 4.

#### CONCLUSION

The Examiner did not err in rejecting claims 1–5 and 7–10 under § 101.

#### DECISION

We affirm the Examiner’s decision to reject claims 1–5 and 7–10.

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