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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PAYAM ZAMANI

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Appeal 2017-003572  
Application 13/037,177  
Technology Center 3600

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Before ERIC B. CHEN, MONICA S. ULLAGADDI, and SCOTT E. BAIN,  
*Administrative Patent Judges.*

CHEN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant seeks our review, under 35 U.S.C. § 134(a), of the Examiner's final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

## INVENTION

Appellant’s invention is a “lead marketplace system and method.” Spec., title. A “lead” is information “about a transaction that a [prospective] customer is interested in.” *Id.* at 1, ll. 19–22. “Leads are not purchase requests per se[;] rather they consist of the information necessary for a Service Provider to contact a customer in an effort to acquire the customer’s business.” *Id.* at ll. 23–25.

The independent claims on appeal are claims 1 and 13. Claim 13 is reproduced below.

13. A computer implemented lead marketplace method that stores a plurality of leads wherein each lead is an electronic contact and transactional information that provides an opportunity to sell a good or service to a prospective customer, the method comprising:

storing, in a seller campaign table storage unit, one or more selling campaigns for one or more Lead Sellers, each selling campaign enabling the association of one or more leads to be sold in a lead marketplace system;

storing, in a buyer campaign table storage unit, one or more buying campaigns for one or more Lead Buyers, each buying campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer associated with the buying campaign, at least one buying campaign further comprises one of a fixed buying campaign that specifies a price and budget for buying a lead and a ping campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer associated with the ping buying campaign when a lead matches the one or more parameters of the ping buying campaign so that the Lead Buyer has the ability to bid on the first lead; and

providing, using a third party buyer ping computer, a notification to the Lead Buyer that the first lead matches the one or more parameters of the ping buying campaign wherein the

notification includes consumer and transaction information associated with the first lead; and

allowing the Lead Buyer to bid on the lead that matches the ping buying campaign.

### REJECTIONS

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. (Final Act. 3–8.)

### ANALYSIS

We are unpersuaded by Appellant’s arguments (App. Br. 9–11; *see also* Reply Br. 3–5) that independent claims 1 and 13 are directed to patent-eligible subject matter under 35 U.S.C. § 101.

The Examiner found that

[t]he limitations of claims 1 and 13 as a whole describe the concept of “selling information” (i.e. a lead), which is considered to be an abstract idea inasmuch as such activity is considered both a fundamental economic practice and a method of organizing human activity by providing an opportunity for parties to enter into a contractual relationship [i.e., *buySAFE, Inc. v. Google, Inc.*]

(Ans. 3) and “the organization and comparison of data which can be performed mentally and is an idea of itself, hence an abstract idea,” which is “similar to other concepts that have been identified as abstract by the courts, such as using categories to organize, store and transmit information (*Cyberfone*), or comparing new and stored information and using rules to identify options (*SmartGene*)” (*id.* at 4). The Examiner further found that “when considering the elements and combinations of elements, the claims as

a whole, do not amount to significantly more than the abstract idea itself.”

(Final Act. 4.) In particular, the Examiner found that

the claim does not amount to an improvement to another technology or technical field; the claim does not amount to an improvement to the functioning of a computer itself; the claim does not move beyond a general link of the use of an abstract idea to a particular technological environment; and the claim amounts to nothing more than requiring a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.

(*Id.*) We agree with the Examiner’s findings and ultimate conclusion that the claims are directed to non-statutory subject matter.

A patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has held that this “provision contains an important implicit exception: [l]aws 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); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (“Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.”). Notwithstanding that a law of nature or an abstract idea, by itself, is not patentable, the application of these concepts may be deserving of patent protection. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71–72 (2012). In *Mayo*, the Court stated that “to transform an unpatentable law of nature into a patent-eligible *application* of such a law, one must do more than simply state the law of nature while adding the words ‘apply it.’” *Mayo*, 566 U.S. at 72 (internal citation omitted).

In *Alice*, the Supreme Court reaffirmed the framework set forth previously in *Mayo* “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 the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.*

If the claims are directed to a patent-ineligible concept, then the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). In other words, 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.’” *Id.* (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* at 2357 (brackets in original) (quoting *Mayo*, 566 U.S. at 77–78). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment or adding insignificant post-solution activity.” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (internal citation and quotation marks omitted). The Court in *Alice* noted that “[s]imply appending conventional steps, specified at a high level of generality,’ was not ‘*enough*’ [in *Mayo*] to supply an ‘inventive concept.’” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 566 U.S. at 82–83,

77–78, 72–73).

*Alice Step one: Are the claims at issue directed to a patent-ineligible concept?*

Independent claim 13 is a method claim, which recites, in part, the following: (i) “storing . . . one or more selling campaigns for one or more Lead Sellers . . . a ping campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer”; (ii) “storing . . . one or more buying campaigns for one or more Lead Buyers”; (iii) “providing . . . a notification to the Lead Buyer that the first lead matches the one or more parameters of the ping buying campaign.” Such method steps of claim 13 are directed to a patent-ineligible abstract idea of collecting, analyzing, and storing data. *See, e.g., Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“a process of gathering and analyzing information of a specified content, then displaying the results” is “directed to an abstract idea”); *Cyberfone Sys. v. CNN Interactive Grp.*, 558 Fed. Appx. 988, 993 (Fed. Cir. 2014) (“[n]or does the particular configuration of steps—obtaining, separating, and then sending information—confer patentability”); *Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (“[w]ithout additional limitations, a process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible”); *SmartGene, Inc. v. Advanced Biological Labs.*, 555 F. App’x 950, 955 (Fed. Cir. 2014) (“the claim at issue here involves a mental process excluded from section 101: the mental steps of

comparing new and stored information and using rules to identify medical options”).

Independent claim 13 also recites “wherein each lead is an electronic contact and transactional information that provides an opportunity to sell a good or service to a prospective customer” in the preamble, along with the following method steps of: (i) “each selling campaign enabling the association of one or more leads to be sold in a lead marketplace system”; (ii) “each buying campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer associated with the buying campaign, at least one buying campaign further comprises one of a fixed buying campaign that specifies a price and budget for buying a lead and a ping campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer associated with the ping buying campaign when a lead matches the one or more parameters of the ping buying campaign so that the Lead Buyer has the ability to bid on the first lead”; (iii) “wherein the notification includes consumer and transaction information associated with the first lead;” and (iv) “allowing the Lead Buyer to bid on the lead that matches the ping buying campaign.” Such remaining method steps of claim 13 are directed to the patent-ineligible abstract concept relating to sales, “a fundamental economic practice long prevalent in our system of commerce” (*see Alice*, 134 S. Ct. at 2356) and the creation of a contractual relationship (*see buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014)).

Accordingly, claim 13 is directed to a patent-ineligible abstract idea. Claim 1, a corresponding system claim, recites limitations similar to those

discussed with respect to claim 13. Thus, claim 1 is also directed to a patent-ineligible abstract idea.

*Alice Step two: Is there something else in the claims that ensures that they are directed to significantly more than a patent-ineligible concept?*

Because claims 1 and 13 are directed to an abstract idea, the question is whether these claims recite an element, or combination of elements, that is enough to ensure that the claim is directed to significantly more than an abstract idea.

Claim 13 is a computer-implemented method claim, which includes a “storage unit” and “computer.” Claim 1, a system claim, recites a “storage system” and a “unit.” The claimed hardware components, including a “storage unit,” “computer,” “storage system,” and “unit” are generic, purely conventional computer elements. (*See, e.g.*, Spec. 4:11–15.) Thus, the claims do no more than require generic computer elements to perform generic computer functions, rather than improve computer capabilities.

Accordingly, appending a conventional “storage unit,” “computer,” “storage system,” and “unit” to an abstract idea is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2358 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”).

First, Appellant argues that “like the *Enfish* case, the claims are directed to an improvement in computer technology in that the claims are directed to a lead marketplace that has the technology improvement of a ping campaign unit [as claimed] . . . which is an improvements over the known technology (evidenced by the fact that no prior art has been cited in

the office action and the claims have been indicated as allowable over the prior art in the final office action.” (App. Br. 9.) However, other than providing a conclusory statement that “the claims are directed to an improvement in computer technology in that the claims are directed to a lead marketplace that has the technology improvement of a ping campaign unit [as claimed] . . . which is an improvements over the known technology,” Appellant has not provided any additional explanation or evidence to support this position. For example, Appellant has not provided citations to the Specification to demonstrate that the claimed invention is an improvement of an existing technology or demonstrated a deficiency in the prior art. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016) (“[O]ur conclusion that the claims are directed to an improvement of an existing technology is bolstered by the specification’s teachings that the claimed invention achieves other benefits over conventional databases, such as increased flexibility, faster search times, and smaller memory requirements”). Moreover, Appellant improperly conflates the requirements for eligible subject matter with the independent requirements of novelty and non-obviousness. “The ‘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).

Second, Appellant argues that “pursuant to *Enfish*, the examiner has inappropriately described the claim at a high level of abstraction untethered from the language of the claim.” (App. Br. 10.) In particular, Appellant argues that “the examiner has set forth a very broad alleged abstract idea

(selling information) while the claims (and the claim language) show that the claims are directed to more than the abstract idea.” (*Id.*) Contrary to Appellant’s arguments, the Examiner found that “[t]he limitations of claims 1 and 13 as a whole describe the concept of ‘selling information’ (i.e. a lead) . . . [as] a fundamental economic practice” (Ans. 3) and “the organization and comparison of data which can be performed mentally and is an idea of itself, hence an abstract idea” (*id.* at 4).

Third, Appellant argues that: (i) “the claims are directed to a technology improvement and thus are directed to patent eligible subject matter” because “the claims recite the ping campaign unit that provides a notification to the Lead Buyer that the first lead matches the one or more parameters of the ping buying campaign” (App. Br. 10); (ii) “[t]he claims apply any alleged abstract idea with a machine that does not perform generic computer functions” (*id.* at 10–11) because “the claims recite the ping campaign unit that provides a notification to the Lead Buyer that the first lead matches the one or more parameters of the ping buying campaign” (*id.* at 11); and (iii) “[t]he claims also add meaningful limitations that amount to more than generally linking the alleged abstract idea to a particular technological environment” because “the claims recite the ping campaign unit that provides a notification to the Lead Buyer that the first lead matches the one or more parameters of the ping buying campaign” (*id.*). However, Appellant has not adequately explained why the claim “purport[s] to improve the functioning of the computer itself” or “any other technology or technical field.” *Alice*, 134 S. Ct. at 2359. In particular, Appellant has not explained why collecting, analyzing, and storing data, improves the function of a computer or other technology.

Fourth, Appellant argues that “[l]ike the *McRO* claims, the present claims are directed to improving an existing technological process (lead marketplace with ping campaigns) like the lip synchronization and facial expression control of animated characters in *McRo*.” (Reply Br. 3.) In particular, Appellant argues that

the one or more buying campaigns . . . , each buying campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer associated with the buying campaign, at least one buying campaign further comprises one of a fixed buying campaign that specifies a price and budget for buying a lead and a ping campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer associated with the ping buying campaign when a lead matches the one or more parameters of the ping buying campaign are like the set of rules in *McRo*

and “like *McRO*, it is the processes . . . and not the use of a computer that improved the existing technological process of lead generation using the elements set forth in the claims.” (*Id.* at 4.) However, other than providing a general conclusory statement that claimed buying campaigns “are like the set of rules in *McRo*” and “it is the processes . . . and not the use of a computer that improved the existing technological process of lead generation,” Appellant has not adequately explained how this case pertains to the claimed invention.

Last, Appellant argues that “[s]imilar to the *Bascom* case, the present claims are directed broadly to lead generation that may be an abstract idea like the content filtering in *Bascom*.” (Reply Br. 5.) In particular, Appellant argues that

like *Bascom*, the present claims are a particular arrangement of elements (including the store, the one or more buying campaigns, the one or more ping campaigns and the ping campaign unit that

provides a notification to the Lead Buyer that the first lead matches the one or more parameters of the ping buying campaign wherein the notification includes one of consumer and transaction information associated with the first lead and that allows the Lead Buyer to bid on the first Lead that matches the ping buying campaign) that are a technical improvement and a technical solution over the prior art ways of lead generation.

(*Id.*) However, other than providing a generalized conclusory statement that claim buying campaigns “the present claims are a particular arrangement of elements . . . that are a technical improvement and a technical solution over the prior art ways of lead generation,” Appellant does not explain how this case pertains to the claimed invention.

Accordingly, we sustain the rejection of independent claims 1 and 13 under 35 U.S.C. § 101. Claims 2–12 and 14–20 depend from claim 1 and 13, and Appellant has not presented any additional substantive arguments with respect to these claims. Therefore, we sustain the rejection of claims 2–12 and 14–20 under 35 U.S.C. § 101, for the same reasons discussed with respect to independent claims 1 and 13.

#### DECISION

The Examiner’s decision rejecting claims 1–20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED