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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* JASON A. CARTER, KENT McLEAN, and  
DARREN R. NOBLE<sup>1</sup>

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Appeal 2017-003695  
Application 13/223,212  
Technology Center 3600

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Before CARL W. WHITEHEAD JR., BRADLEY W. BAUMEISTER, and  
MICHAEL J. STRAUSS, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's  
Final Rejection of claims 1–9 and 11–15. App. Br. 2.<sup>2</sup> We have jurisdiction  
under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants list Adobe Systems Incorporated as the real party in interest.  
Appeal Brief filed April 20, 2016 (“App. Br.”) 1.

<sup>2</sup> Rather than repeat the Examiner's positions and Appellants' arguments in  
their entirety, we refer to the above-mentioned Appeal Brief, as well as the  
following documents, for their respective details: the Final Action mailed  
Sept. 25, 2015 (“Final Act.”); the Examiner's Answer mailed Nov. 4, 2016  
 (“Ans.”); and the Reply Brief filed December 19, 2016 (“Reply Br.”).

## STATEMENT OF THE CASE

Appellants describe the present invention as follows:

Methods and apparatus for various embodiments of an automated campaign generation tool for creating content given one or more sources of data. The campaign generation tool may provide an interface to guide a user through a series of steps by which an automated content generation task is specified and created, such that when the automated content generation task is executed, one or more content objects may be generated in order to be provide[d] to a search engine. By automating the content generation, a user may be able to manage a large and frequently updated source of data.

Abstract.

Independent claim 1, reproduced below, illustrates the claimed invention:

A computer-implemented method, comprising:

receiving, at a computing device hosting an automated online advertising campaign generation tool, one or more source feeds of structured data comprising price information for products;

analyzing, by a structured data analyzer of the automated online advertising campaign generation tool, the structured data to determine one or more feed elements from which to generate online advertising content;

accessing, by a mapping analyzer of the automated online advertising campaign generation tool, a mapping of feed elements to dynamic parameters for one or more campaign content generation templates specified for the one or more source feeds, wherein a dynamic parameter defines a mathematical expression;

for each specified campaign content generation template, automatically generating new online advertising content based on:

the template;

a calculation of new price information for the products using the mathematical expression and at least a portion of the received price information; and

the structured data according to the mapping for the corresponding template; and

providing the generated online advertising content to a search engine configured to associate the generated online advertising content with search results.

Claims 1–9 and 11–15 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 2–4.<sup>3</sup>

Claims 1–5, 7–9, and 11–15 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Zlotin (US 2007/0233566 A1; published Oct. 4, 2007), Skillen (US 2009/0192899 A1; published July 30, 2009), Ferber (US 2005/0171844 A1; published Aug. 4, 2005), and Ekholm (US 2012/0084173 A1; published April 5, 2012). Final Act. 5–9.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Zlotin, Skillen, Ferber, Ekholm, and Shah (US 8,650,066 B2; issued Feb. 11, 2014). Final Act. 9.<sup>4</sup>

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<sup>3</sup> The Examiner incorrectly states in the Final Action that claims 44–65 are rejected under 35 U.S.C. § 101, but these claims previously were canceled and are not under consideration. *See* App. Br. 6 (noting that claims 44–65 no longer are pending in the application and that Appellants understand the Examiner to be referring to claims 1–9 and 11–15); *see also* Final Act. 4 (stating that the “claims”—in the plural—do not add meaningful limitations and, thereby, indicating that all of the pending claims are subject to the patent-ineligibility rejection); Ans. 2–8 (not addressing Appellants’ observation about the misnumbering of the rejected claims). Accordingly, we understand the Examiner’s listing of claims 44–65 to constitute a clerical error intending to recite pending claims 1–9 and 11–15.

<sup>4</sup> The Final Rejection states that claim 6 stands rejected under the combination of merely Zlotin and Shah and that claim 9 stands rejected over

Claim 9 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Zlotin, Skillen, Ferber, Ekholm, and Liu (US 2005/0154746 A1; published July 14, 2005). Final Act. 9–10.

Claims 10 and 16–20 are withdrawn from consideration. *Id.* at 2.

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

## THE 101 REJECTION

### *Determinations and Contentions*

The Examiner finds that the claims are directed a process of “[a]nalyzing ad[vertisement] data; mapping the elements of the data; creating a new ad based on a template; and providing the ad to users via search results.” Final Act. 3. The Examiner determines that these steps are directed to multiple abstract ideas: a fundamental economic practice, as well as the concepts of comparing new and stored information and using rules to identify options, creating contractual relationships, processing information through a clearinghouse, and organizing information through mathematical correlations. *Id.* at 2–3.

The Examiner also determines that “the claims fail to effect an improvement . . . to the functioning of the computer itself,” but instead

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the combination of Zlotin and Liu. Final Act. 9. Because claims 6 and 9 depend from claim 1, though, we understand these assertions to constitute clerical errors intending to state that the rejections are over the combination of all of Zlotin, Skillen, Ferber, Ekholm, and either Shah or Liu, respectively.

merely use the abstract idea in a particular technological environment. *Id.* at 3–4. The Examiner further determines that “the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claims merely amount to the application or instructions to apply the abstract idea” using “generic computer functionalities [that were] well-understood, routine[,] and conventional activities previously known to the industry.” *Id.* at 3.

Appellants contend that the Examiner fails to establish a prima facie showing of subject-matter ineligibility (App. Br. 6–8; Reply Br. 2–5), that “the claims are not directed to an abstract idea” (App. Br. 8–9; Reply Br. 6–10), and that even assuming the claims are directed to an abstract idea, the claims amount to significantly more than the abstract idea (App. Br. 9–12). We address the details of each of these arguments individually in the Analysis section, below.

*Principles of Law*

*A. SECTION 101*

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), and *Alice*. 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 75–77). In accordance

with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting

to limit the use of the formula to a particular technological environment.” *Id.* (internal citation omitted) (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an “inventive concept”” sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). “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.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

#### *B. USPTO SECTION 101 GUIDANCE*

The United States Patent and Trademark Office (“USPTO” or “the Office”) recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum” or “Office Guidance”). Under that guidance, we first look to whether the claim recites the following:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).<sup>5</sup>

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

### *Analysis*

#### I.

Appellants assert that the Examiner failed to establish a *prima facie* showing that the claims are directed to patent-ineligible subject matter. We disagree. The Examiner specifically stated what the abstract idea purportedly is: a process of “[a]nalyzing ad[vertisement] data; mapping the elements of the data; creating a new ad based on a template; and providing the ad to users via search results.” Final Act. 3. The Examiner also identified the specific concepts of the abstract ideas to which the claimed method corresponds. Specifically, the Examiner determines that these steps are directed to a fundamental economic practice, as well as the concepts of comparing new and stored information and using rules to identify options,

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<sup>5</sup> We acknowledge that some of these considerations may be evaluated properly under Step 2 of *Alice* (Step 2B of the Office Guidance). Solely for purposes of maintaining consistent treatment within the Office, we evaluate this inquiry under Step 1 of *Alice* (Step 2A of the Office Guidance).

creating contractual relationships, processing information through a clearinghouse, and organizing information through mathematical correlations. *Id.* at 2–3.

The new Office Guidance sets forth a limited set of concepts upon which the Examiner may rely in determining that the claims are directed to an abstract idea:

In accordance with judicial precedent and in an effort to improve consistency and predictability, the 2019 Revised Patent Subject Matter Eligibility Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes [a specified listing of] groupings of subject matter, when recited as such in a claim limitation(s) (that is, when recited on their own or per se) . . . .

Office Guidance, 50 Fed. Reg. at 52.

These concepts include mental processes such as forming an observation, evaluation, or judgment (*id.*), as well as mathematical concepts like mathematical relationships, formulas, and calculations (*id.*). As such, the Examiner’s determination that the claims are directed to at least these mental processes and mathematical concepts establishes a *prima facie* showing that the claims are directed to those abstract ideas that are recognized by the Office. The burden of rebuttal is shifted to Appellants.

## II.

Appellants next present various arguments for why the claims are not directed to an abstract idea. For example, Appellants argue that “the claims relate to improving the operations of a search engine by providing [specified automated] online advertising content to the search engine” and that “[s]uch features do not meet the . . . definition of a fundamental economic practice judicial exception.” App. Br. 8. These arguments are unpersuasive at least

because claim 1, in fact, is not directed to an improvement in a search engine itself.

Independent claim 1 does not even claim the operation of a search engine. Claim 1 instead recites steps for receiving structured data, evaluating the data, using mathematical relationships to generate online advertising content, and providing this generated content to search engines for the search engine's subsequently intended, but unclaimed, use. These claimed method steps may fall within the field of use of search-engine technology, but the method steps do not recite an improvement in search-engine technology, itself.

Appellants also argue that “the claims are more limited in scope than the alleged abstract idea and do not create a risk of tying up the alleged abstract idea.” *Id.* at 9. We recognize that the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice*, 573 U.S. at 216. However, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. As our reviewing court has explained: “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 216). Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

In their Reply Brief, Appellants subsequently argue that more recent decisions of our reviewing court also support their position that the claims are directed to an improvement in computer-related technology—not to an abstract idea. Reply Br. 6–9 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016); *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); *Bascom Global Internet Services, Inc. v AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). Appellants contend that “‘a claim is directed to an improvement in computer-related technology’ when there is an indication of . . . ‘a particular solution to a problem or a particular way to achieve a desired outcome defined by the claimed invention, as opposed to merely claiming the idea of a solution or outcome.’” Reply Br. 6–7 (quoting The Bahr Memorandum, *Recent Subject Matter Eligibility Decisions*, dated Nov. 2, 2016), <https://www.uspto.gov/sites/default/files/documents/McRo-Bascom-Memo.pdf>).

Applying this principle to the present appeal, Appellants contend that their Specification identifies two problems to be resolved:

Given large and frequently updated streams of content, search engine marketers may quickly become overwhelmed with the burden of producing advertising campaign objects for the many items of content coming in. Further, for any given content source, a search marketer may need to create a large number of varying advertising campaign objects that may be used by a search engine to advertise the content on which the advertising campaign is based.

Reply Br. 8 (quoting Spec. ¶ 1).

Appellants contend that their Specification thus describes—and their claims capture—a particular way to solve this problem and achieve the desired outcome:

- analyzing, by a structured data analyzer of the automated online advertising campaign generation tool, the structured data to determine one or more feed elements from which to generate online advertising content;
- accessing, by a mapping analyzer of the automated online advertising campaign generation tool, a mapping of feed elements to dynamic parameters for one or more campaign content generation templates specified for the one or more source feeds, wherein a dynamic parameter defines a mathematical expression;
- automatically generating new online advertising content based on:
  - the template;
  - a calculation of new price information for the products using the mathematical expression and at least a portion of the received price information; and
  - the structured data according to the mapping for the corresponding template.

Reply Br. 8.

This argument is unpersuasive because, as noted above, the recited steps are not directed to search-engine technology, much less any improvement to search-engine technology. More generally, Appellants also provide insufficient arguments or evidence that the claims are directed to an improvement in the functioning of a computer for data gathering, data processing, or any technical field or endeavor. *See generally* App. Br.; Reply Br. For example, Appellants recite various components that are used in the claimed method. *See, e.g.*, App. Br. 11 (stating that the invention uses a campaign content generation template). But stating that the invention uses a component to improve an unclaimed search engine, is not the same as presenting arguments persuasively explaining why any of the claimed components, themselves, possess or implement a technical improvement.

Appellants do not assert that the present invention improves the functioning of known structured-data analyzers, mapping analyzers, or automated-content generators. *See generally* App. Br.; Reply Br. Restated, Appellants provide insufficient arguments or evidence that the claims are directed to a particular machine or transformation, or that the claims include any meaningful limitations beyond the abstract idea. *Id.* We, therefore, agree with the Examiner that “the claims fail to effect an improvement . . . to the functioning of the computer itself,” but, instead, merely use the abstract idea in a particular technological environment. Final Act. 3–4.

Furthermore, claim 1’s first step of “receiving . . . one or more source feeds of structured data” reasonably can be characterized as merely constituting insignificant pre-solution activity:

An example of pre-solution activity is a step of gathering data for use in a claimed process, *e.g.*, a step of obtaining information about credit card transactions, which is recited as part of a claimed process of analyzing and manipulating the gathered information by a series of steps in order to detect whether the transactions were fraudulent.

MPEP § 2106.05(g).

Similarly, claim 1’s final step of “providing the generated online advertising content to a search engine” does not add any meaningful limitations to the abstract idea because it reasonably may be characterized as merely being directed to the insignificant post-solution activity of transmitting data. *E.g., Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241–42 (Fed. Cir. 2016) (holding that printing or downloading generated menus constituted insignificant extra-solution activity).

III.

The Examiner further determines that “the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claims merely amount to the application or instructions to apply the abstract idea” using “generic computer functionalities [that were] well-understood, routine[,] and conventional activities previously known to the industry.” Final Act. 3.

Appellants argue that even if the claims can be characterized as being directed to an abstract idea, “[t]he claims also add specific limitations other than what is well-understood, routine, and conventional in the field.” App. Br. 9. Appellants again contend that the claim limitations discussed above “improv[e] operations of a search engine based on automatic generation of online advertising content.” *Id.*

For the reasons set forth above, we again disagree. No search engine is actually claimed. And even if a search engine were claimed, Appellants do not provide persuasive evidence that the technology of the search engine, itself, has been altered or improved. *See generally* App. Br.; *see also* Spec. Rather, the claims are directed towards making the preliminary acts of data gathering, evaluation, and organization more efficient by automating these tasks through the use of computer components.

Furthermore, Appellants’ Specification indicates that the computer components used to implement the invention are conventional:

In various embodiments, the computer system may be a uniprocessor system including one processor, or a multiprocessor system including several processors (e.g., two, four, eight, or another suitable number). The processors may be any suitable processor capable of executing instructions. For example, in various embodiments, the processors may be general-purpose or

embedded processors implementing any of a variety of instruction set architectures (ISAs), such as the x86, PowerPC, SPARC, or MIPS ISAs, or any other suitable ISA. In multiprocessor systems, each of processors may commonly, but not necessarily, implement the same ISA.

Spec. ¶ 75; *see generally id.* ¶¶ 73–83 (reciting an array of conventional computer components that can be employed in the present system).

#### IV.

Appellants separately argue that dependent claim 9 is directed to significantly more than an abstract idea because that claim additionally recites determining a relevancy measure of keywords and determining a suitability score for the generated online advertising content. App. Br. 11. Appellants contend that these limitations improve the technology and operations of existing search engines. *Id.* at 11–12.

This argument is unpersuasive for the reasons set forth above in relation to independent claim 1 and the other claims. The argued determining steps are not directed to the technology of the search engine, itself. Moreover, these steps also reasonably may be characterized as being directed to mental evaluations or mathematical calculations.

#### *Conclusions*

For the foregoing reasons, Appellants have not persuaded us either that the Examiner erred in determining that the claims are directed to patent-ineligible subject matter or that the Examiner failed to comply with the Office Guidelines. Accordingly, we sustain the § 101 rejection of claims 1 and 9, as well as claims 2–8 and 11–15, which are not argued separately from claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

## THE 103 REJECTIONS

### *Determinations and Contentions*

The Examiner finds that Zlotin discloses the steps of receiving a source of structured data comprising price information; analyzing the data and accessing a map of feed elements to dynamic parameters for one or more content generation templates specified for the source feed; generating content based on the template and data from the structured data; and providing the content to a search engine. Final Act. 5 (citing Zlotin ¶¶ 35, 50, 52, 53, 55, 62; Figs. 3–5; claim 24). The Examiner relies on Skillen for teaching the step of providing advertisements to a search engine that is configured to associate the content with search results. *Id.* (citing Skillen ¶ 36). The Examiner cites Ferber for teaching a method in which a dynamic parameter defines a mathematical expression, and a method for calculating a new price for a product using a mathematical expression that incorporates prior pricing information. *Id.* at 6 (citing Ferber ¶¶ 10, 24, 38, 47, 49). The Examiner relies on Ekholm for teaching a method in which initial pricing information for products is received, and the pricing is calculated/adjusted according to dynamic parameters. *Id.* (citing Ekholm ¶ 89). The Examiner also determines that motivation existed to combine the four cited references in a manner that renders obvious independent claim 1. *Id.* at 2–7.

Appellants argue:

[T]he [determinations] of obviousness is erroneous because (1) the cited references do not teach or suggest generating new online advertising content based on a calculation of new price information for products using a mathematical expression and at least a portion of received price information, (2) the Examiner

failed to establish a *prima facie* case of obviousness, and because (3) the cited references are not properly combinable.

App. Br. 12.

In relation to the first argument, Appellants further assert that although Ekholm describes price updates over time, Ekholm's price is a price of the item on the virtual market and not a price that is advertised in an online advertisement. In other words, the combination of Zlotin and Ekholm does not disclose automatically generating new online advertising content based on a calculation of new price information for the products using the mathematical expression and at least a portion of the received price information as recited in the independent claims. Instead, the combination discloses a price of an item that is updated over time, where the price is shown on a virtual market that sells the item based on a quote request from a customer.

*Id.* at 13.

#### *Analysis*

We disagree with the Examiner's conclusion that the relied upon teachings of Zlotin and Ekholm, when combined, "sufficiently constitut[e] a *prima facie* case for obviousness." Ans. 9. The relied upon passages of Zlotin that discuss pricing more specifically relate to prices that retailers and promoters bid for keywords used to populate templates. *E.g.*, Zlotin ¶ 35. On the other hand, the passage of Ekholm relied upon by the Examiner reads as follows:

Once the initial price of the items of goods **633** is set, communicated (e.g. presented at the homepage, or broadcasted to the nodes in the system) on the virtual market, the algorithms for the dynamical pricing method determined and the commence starts, this price is continuously updated as a dynamic price. If a customer (e.g. a node in the system) initiates a request to order,

“quote”, the dynamic price is presented as a temporary frozen price during a limited time period,  $\Delta t_{freeze}$ .

Ekholm ¶ 89.

That is, Ekholm teaches a governing node 600 of a computer network that provides dynamic price quotes directly to customers associated with the other nodes of the network 200, 300, 400, 500. Ekholm ¶ 53; Fig. 1.

Neither Zlotin nor Ekholm teaches accessing a mapping of feed elements to dynamic parameters for campaign content generation templates—at least not wherein the templates are used for automatically generating new online advertising content that is provided to a search engine, as recited in claim 1. The Examiner’s combination of the cited references to teach the recited claim elements, instead, appears to be the product of impermissible hindsight.

Accordingly, we do not sustain the obviousness rejection of independent claim 1 or of independent claim 11, which recites similar language. We likewise do not sustain the obviousness rejection of claims 2–5, 7, 8, 12–15, which depend from claims 1 and 11.

With respect to the remaining obviousness rejections of claims 6 and 9, the Examiner does not rely on either Shah or Liu to cure the noted deficiency noted above in relation to claim 1. *See* Final Act. 9–10. Accordingly, we, likewise, do not sustain the obviousness rejections of claims 6 and 9 for the reasons set forth in relation to claim 1.

## CONCLUSIONS

We sustain the rejection of claims 1–9 and 11–15 under § 101.

We do not sustain the rejection of claims 1–9 and 11–15 under § 103.

Appeal 2017-003695  
Application 13/223,212

DECISION

The Examiner's decision rejecting claims 1–9 and 11–15 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED