



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Row 1: 13/532,975, 06/26/2012, Spencer Powell, 26295-20045/US, 5502
Row 2: 87851, 7590, 07/31/2018, Facebook/Fenwick, Silicon Valley Center, 801 California Street, Mountain View, CA 94041
Row 3: EXAMINER KOLOSOWSKI-GAGER, KATHERINE
Row 4: ART UNIT 3622, PAPER NUMBER
Row 5: NOTIFICATION DATE 07/31/2018, DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptoc@fenwick.com
fwfacebookpatents@fenwick.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* SPENCER POWELL and SEAN MICHAEL BRUICH

---

Appeal 2017-004272  
Application 13/532,975  
Technology Center 3600

---

Before JOHN A. JEFFERY, ST. JOHN COURTENAY III, and  
ERIC S. FRAHM, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–16, which are all the claims pending in this application. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

*Introduction*

Appellants' invention "relates generally to brand promotion in a social networking system." (Spec. ¶ 1).

---

<sup>1</sup> According to Appellants, the real party in interest is Facebook, Inc. of Menlo Park, California. App. Br. 2.

*Exemplary Claim*

1. A computer-implemented method comprising:

storing, in a social networking system, a first brand profile associated with a first brand corresponding to a first commercial enterprise, a second brand profile associated with a second brand corresponding to a second commercial enterprise, and *a set of connections between the first brand and a plurality of users of the social networking system, the connections indicating expressed interest in the first brand declared by the plurality of users in the social networking system;*

receiving an endorsement request from the second brand, the endorsement request comprising an interaction between the first brand and the second brand describing by the second brand, affirmative support from the first brand toward the second brand;

responsive to the endorsement request, establishing a connection between the first brand and the second brand, the connection describing support of the second brand by the first brand;

receiving an advertisement request from the second brand, the advertisement request comprising advertisement content for the second brand and a request to communicate the connection between the first brand and the second brand to one or more users who have connections to the first brand; and

providing an advertisement for display to at least one user connected to the first brand, the advertisement including a description of the connection between the first brand and the second brand.

App. Br. 19 (emphasis added to contested limitations).

*Rejections*

- A. Claims 1–16 are rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 2.
- B. Claims 1–11 are rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Steelberg et al. (US 2011/0106632 A1 published May 5, 2011) (hereinafter “Steelberg”).<sup>2</sup> Final Act. 5.
- C. Claims 12–16 are rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Trout et al. (US 2009/0276453 A1 published Nov. 5, 2009) (hereinafter “Trout”). Final Act. 8.

*Grouping of Claims*

Claims 1, 7, and 12 are independent claims. Regarding anticipation rejections B and C over the cited prior art, and based upon Appellants’ arguments, we decide the appeal of rejection B of claims 1–11 on the basis of representative independent claim 1. Based on Appellants’ arguments, we decide the appeal of rejection C of claims 12–16 on the basis of representative independent claim 12. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2012).

*Issues on Appeal*

Did the Examiner err in rejecting claims 1–16 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter?

Did the Examiner err in rejecting claims 1–11 under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Steelberg?

---

<sup>2</sup> Although the Examiner relied on 35 U.S.C. § 102(a) for Rejection B (Final Act. 5), we note Steelberg is a § 102(b) reference, published on May 5, 2011, more than a year prior to Appellants’ effective filing date of June 26, 2012. Appropriate correction to Rejection B has been made above.

Did the Examiner err in rejecting claims 12–16 under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Trout?

#### ANALYSIS

We have considered all of Appellants’ arguments and any evidence presented. To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We highlight and address specific findings and arguments for emphasis in our analysis below.

#### *Mayo/Alice Analysis under 35 U.S.C. § 101*

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 82–84 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355.

The first step in that analysis is to determine whether the claims at issue are directed to one of those patent-ineligible concepts, such as an *abstract idea*. Abstract ideas may include, but are not limited to,

fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57.

If the claims are *not directed* to a patent-ineligible concept, *the inquiry ends*. See *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017).

Otherwise, the inquiry proceeds to the second step in which the elements of the claims are considered “individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). We consider the question of whether the claims are directed to a *specific improvement* in the capabilities of the computing devices, or, instead, “a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

We, therefore, decide under step two whether the claims: (a) set forth an *inventive concept* that provides a specific means or method that *improves* the relevant technology, or (b) are directed to a result or effect that itself is the abstract idea, in which the claims merely invoke generic processes and machinery. See *Enfish*, 822 F.3d at 1336.

*The Examiner’s Rejection A under 35 U.S.C. § 101*

Regarding the first step of the *Alice/Mayo* analysis, the Examiner concludes claims 1–16 are directed to an abstract idea:<sup>3</sup>

---

<sup>3</sup> “Patent eligibility under § 101 presents an issue of law . . . .” *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1340 (Fed. Cir. 2013).

The claimed invention is directed to providing brand affiliated advertisements to a user, based on a user and brand profile. Providing brand affiliated advertisements to a user, based on a user and brand profile is *a fundamental economic practice* (targeted advertisements to create more effective delivery).

Final Act. 4 (emphasis added).

Regarding the second step of the *Mayo/Alice* analysis, the Examiner finds the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception,

The steps or acts performed such as storing brand and user profiles, and delivering an advertisement endorsing one brand or both brands to the users based on those profiles, (utilizing a processor) in independent method claims 1, 7, 12 are not enough to qualify as "significantly more" than the abstract idea itself, since the claim is a mere instruction to apply the abstract idea. Furthermore, *there is no improvement to another technology or technical field, no improvements to the functioning of the computer itself, and no meaningful limitations beyond generally linking the use of an abstract idea to a particular technical environment, and the claims require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional.*

Final Act. 4–5 (emphasis added).<sup>4</sup>

For the aforementioned reasons, the Examiner concludes that all claims 1–16 on appeal are not patent-eligible under 35 U.S.C. § 101.

---

<sup>4</sup> The patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

*Mayo/Alice Analysis — Step 1*

Regarding *Alice* Step 1, Appellants argue the Examiner has failed “to provide an analysis or explanation for why the proposed abstract idea is a judicial exception, [therefore] the Examiner's assertions are unsupported by the record and should be reversed on this basis alone.” Appellants further contend “the Examiner's identification of an alleged abstract idea fails to meet the *prima facie* burden for a § 101 rejection by failing to compare the proposed abstract idea with abstract ideas identified by the courts.”

App. Br. 8.

In response, the Examiner further explains the basis for the rejection:

the Examiner has considered the claims as an ordered combination of steps and has identified the claimed invention as being drawn to an *abstract idea, that being providing contractually obligated, brand affiliated advertisements based on a user and brand profile, which is a concept relating to the creation of business relations*. This also includes the relationships or transactions created between the endorsing entities, intended to increase efficiency or effectiveness of the targeted advertisement, whereby the endorsement is intended as the creation of a contractual relationship whereby one is obligated, upon request or acceptance, to endorse or promote the other entity. *Such practices involving creation of contractual relationships have been held to be "Fundamental Economic Practices". Further, creation of Contractual Relationships may also be considered a "Method of Organizing Human Activity"*. Such an idea of contractual endorsement between brand entities is analogous to the creation of a contractual relationship, as in *buySafe*.<sup>[5]</sup> Further, elements of a

---

<sup>5</sup> The Examiner is referring to *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (The claims are squarely about creating a contractual relationship—a “transaction performance guaranty”—that is beyond question of ancient lineage . . . In short, with the approach to this kind of section 101 issue clarified by *Alice*, it is a straightforward matter to

contractual relationship between business entities was found to be an abstract idea in the holding of Alice itself.

Ans. 3 (emphasis added).

Our reviewing court has concluded that abstract ideas include the concepts of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); *see also Smart Sys. Innovations, LLC v. Chicago Transit Authority*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (concluding “claims directed to the collection, storage, and recognition of data are directed to an abstract idea.”).

Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Similarly, “collecting, displaying, and manipulating data” is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017); *see also SAP Am., Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1021 (Fed. Cir. 2018) (“merely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis”) (quotations omitted).

Moreover, our reviewing court recently has concluded that acts of parsing, comparing, storing, and editing data are abstract ideas. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1366 (Fed. Cir. 2018); *see also Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016) (holding that “analyzing information by steps people go through in their minds, or by

---

conclude that the claims in this case are invalid.”) (citation omitted).

mathematical algorithms, without more, [are] mental processes within the abstract-idea category” (citation omitted)). As in *Electric Power*, the combination of various abstract ideas relating to data collection and analysis is itself an abstract idea.

Applying this guidance to the claims before us on appeal, we conclude at least the recited step of “storing, in a social networking system, a first brand profile associated with a first brand corresponding to a first commercial enterprise, a second brand profile associated with a second brand corresponding to a second commercial enterprise, and a set of connections between the first brand and a plurality of users of the social networking system” is merely a *method of collecting information* to facilitate the *result* of “providing of an advertisement for display to at least one user connected to the first brand, the advertisement including a description of the connection between the first brand and the second brand.” Claim 1.

For the aforementioned reasons, we conclude the claims before us on appeal are directed to a fundamental economic practice, which includes the use of brands, endorsements, and advertisements. Further, we agree with the Examiner that the creation of contractual relationships may also be considered a method of organizing human activity. Ans. 3. Therefore, on this record, we find Appellants’ contentions regarding *Alice* Step 1 are not persuasive. Accordingly, we proceed to *Alice* Step 2.

#### *Mayo/Alice Analysis – Step 2*

Because we conclude the claims are directed to an abstract idea for essentially the same reasons articulated by the Examiner (Final Act. 4), we turn to the second part of the *Alice/Mayo* analysis. We analyze the claims to determine if there are additional limitations that individually, or as an

ordered combination, ensure the claims amount to ““significantly more”” than the abstract idea. *Alice*, at 2357.

Regarding *Alice* Step 2, Appellants address the purported *inventive concept* of the claims by merely reciting the *storing, establishing a connection, and, providing an advertisement* claim 1 limitations, and then asserting:

The limitations above do not simply recite the proposed abstract idea. Rather, they *provide an inventive application by relating brands together and permitting the relationship to be displayed to users that like one of the brands*. This is not simply "brand-affiliated advertising" but rather provides for a brand to support another brand, and display advertisements to users based on the brand's support. Thus, claim 1 *provides significantly more than "providing brand affiliated advertisements to a user, based on a user and brand profile,"* which means it is eligible under § 101.

App. Br. 11 (emphasis added).

Appellants recite similar limitations regarding claims 7 and 12. (*Id.*). Appellants urge: “The claims, as a whole, recite a method for advertising an endorsement of a brand connected to the endorsing brand, and a method for identifying potential endorsers of an advertising brand. The claims, as a whole, do not generically recite performance of the proposed abstract idea and are not generic computer functions.” App. Br. 13.

In response, the Examiner further explains the basis for the rejection:

the limitations do not recite significantly more than the judicial exception, *merely the generic use of a processor to carry out the several steps of an abstract idea*. Appellant has presented an incorrect analysis of claim limitations at pages 10-11: "storing a set of connections ... ", "establishing a connection between [brands] ... describing support of the second brand by first brand ... ", "providing an advertisement for display ... including a description of the connection between the first brand and the

second brand". Again, as discussed above, *Appellant's advertisement is generated as a means to promote the contractual/business relationship between the entities*. The steps in particular that Appellant incorrectly argues represent significantly more are *merely a string of abstract ideas*, which does not translate to significantly more.

Ans. 5 (emphasis added).

In the Reply Brief, Appellants cite to two Federal Circuit opinions as intervening authority:

The Federal Circuit released its decisions in *Enfish, LLC v. Microsoft Corp.* and in *McRO, Inc. v. Bandai Namco Games America Inc.* on May 12, 2016 and September 13, 2016, after the Brief filed on April 25, 2016. These cases, decided after filing of the Brief, provide good cause for the Board to also consider the claims as not directed to any abstract idea under Step 2A of the Alice Test. Additionally, these arguments are a continuation of the arguments in the Brief that "many limitations in the claim do not appear to be directed to the proposed abstract idea" (Brief at 9), and are also responsive to the Examiner's assertion in the Answer that the claims are directed to "contractually obligated, brand affiliated advertisements based on a user and brand profile." Answer at 3.

Reply Br. 3.

Our reviewing court found *Enfish's* invention was an "improvement of an existing technology" that, unlike conventional relational and object-oriented databases, did not require a programmer to predefine a structure to which subsequent data entry must conform. *Enfish*, 822 F.3d at 1337.

However, we find Appellants' claims are clearly distinguished from the claims considered by the court in *Enfish*, 822 F.3d at 1336, because Appellants' claims are *silent* regarding any mention of a database, much less a "self-referential table" that "is a specific type of data structure designed to

improve the way a computer stores and retrieves data in memory.” *Enfish*, 822 F.3d at 1339. Further, regarding *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (2016), our reviewing court guides: “The abstract idea exception prevents patenting a *result* where ‘it matters not by what process or machinery the result is accomplished.’” (quoting *O’Reilly v. Morse*, 56 U.S. 62, 113 (1854)) (emphasis added).

Our reviewing court has “repeatedly held that such invocations of computers and networks that are not even arguably inventive are ‘insufficient to pass the test of an inventive concept in the application’ of an abstract idea.” *Elec. Power Grp.*, 830 F.3d at 1355 (internal citations omitted); *see also Intellectual Ventures I*, 850 F.3d at 1341 (“Rather, the claims recite both a generic computer element—a processor—and a series of generic computer ‘components’ that merely restate their individual functions . . . . That is to say, they merely describe the functions of the abstract idea itself, without particularity. This is simply not enough under step two.”).

Because none of Appellants’ claims on appeal is directed to an *improvement* in a processor, database, or other computer/network component, we conclude that none of the claim limitations, viewed both individually and as an ordered combination, amounts to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter.

Applying the aforementioned guidance from our reviewing courts to the claims before us on appeal, we conclude, in our *Mayo/Alice* analysis, that each of Appellants’ claims 1–16, considered as a whole, is directed to (under step one), a *patent-ineligible abstract idea*, and under step two, does not recite something “*significantly more*” (*Alice*, at 2357 (internal citation and

quotations omitted)) to transform the nature of the claim into a patent-eligible application.

Accordingly, for at least these reasons, we sustain the Examiner's rejection A under 35 U.S.C. § 101 of claims 1–16 as being directed to patent-ineligible subject matter in light of *Alice* and its progeny.<sup>6</sup>

*Anticipation Rejection B of Claims 1–11 over Steelberg*

**Issue:** Under pre-AIA 35 U.S.C. § 102(b), did the Examiner err by finding Steelberg expressly or inherently discloses the contested limitation of “*a set of connections between the first brand and a plurality of users of the social networking system, the connections indicating expressed interest in the first brand declared by the plurality of users in the social networking system,*” within the meaning of representative independent claim 1? (emphasis added).<sup>7</sup>

Appellants contend:

the target consumers disclosed in Steelberg are associated with a brand requesting an endorsement from another brand. The claims, on the other hand, recite "receiving an endorsement request from the second brand" and "providing an advertisement request to at least one user connected to the first brand." In other words, the brand that is requesting an endorsement is not the same brand that is connected to the users receiving the advertisement. *Since Steelberg's target consumers are associated with the requesting brand, rather than the brand*

---

<sup>6</sup> To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

<sup>7</sup> We give the contested claim limitations the broadest reasonable interpretation (BRI) consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

*being requested for an endorsement, Steelberg does not anticipate the limitations of claim 1.*

Furthermore, the claims recite that the connections between the first brand and the plurality of users "indicat[e] expressed interest in the first brand declared by the plurality of users." As described above, a user can expressly declare interest in a brand by "liking" or "being a fan" of the brand. See Specification, ¶ 11. Steelberg describes a target consumer as "the ideal customer for the particular goods being advertised, from a socio-economic perspective, from a morals and values perspective, from an age or interest level perspective, or based on other similar factors." See Steelberg, ¶ 3. However, *Steelberg does not disclose a target consumer expressing declared interest in a brand.*

App. Br. 14–15 (emphasis added).

#### *The Examiner's Claim Construction*

In response (Ans. 6–7), the Examiner further explains the basis for the rejection, which is based upon a broader interpretation of the contested claim language:

*As per the limitation of "a set of connections between the first brand and a plurality of users of the social networking system, the connections indicating expressed interested in the first brand declared by the plurality of users in the social networking system", Examiner has interpreted this limitation as creating a profile for a user, based on a user's prior interaction with brand page(s). Further, this element of the limitation is largely non-structural descriptive material, whereby the connections themselves are simply descriptive of the type of data being stored with the profiles for the brands in the system.*

A "user" is interpreted as an individual not connected with the brand beyond some indication of an interest on the part of the user, or the user being perceived as someone who would react favorably to an advertisement based on a past profile history. This interpretation is supported by Appellant's specification at

[014], wherein a user is an individual is a user of the system, "represented by user profiles and connections".

A "brand" is interpreted by Examiner as any entity or element that is a "non-individual entity in a social network", as supported by Appellant's specification at [015]. Paragraph [015] also makes it clear that a "brand" profile functions identically to a user profile: "A brand shares many attributes of individual users ... profile pages, ... content, ... connections"

and [016] states that "An endorsement can comprise any positive relationship between brands in the social network", and as such Examiner has interpreted "brand endorsements" to be any "positive interaction" between profiles of users in a social network.

The "profile" for a user is interpreted to be created based on the user's interactions with the brand page(s). This is supported by Appellants specification at 014-016: "an individual is represented in the social networking system by user profiles and connections to other individuals ... connections can be explicit or implicit" [014], [022], both of which disclose alternatives of determining a relationship between a user and a brand.

An "explicit" relationship is formed via a user liking a brand, and an implicit relationship is formed via a number of activities including "performing other actions within the social networking system associated with the brand" (see Appellant's specification, 022).

The specification does not provide for any functional difference in the targeting of advertisements, i.e. the invention, once a "fan" is identified or "declared" via implicit or explicit relationships, and further, as the term "declared" is not present in the specification, Examiner has interpreted that "declared" relationships may be created implicitly via user interaction history.

Ans. 6–7 (paragraph breaks added).

In the Reply Brief (14), Appellants address the Examiner's broader claim construction and contend it is improper:

It is improper to equate explicit relationships and implicit relationships, because they are not "functionally identical," as asserted by the Examiner. Answer at 9. A connection that represents an explicit relationship between a user and a brand is a codification of an interest explicitly declared by the user, whereas an implicit relationship is inferred by the social networking system and involves a level of uncertainty in the interest in the brand. Therefore, the Examiner's conflation of *explicit relationships* and *implicit* is improper.

As explained in the Brief, Steelberg does not disclose explicit relationships between users and brands. Instead, Steelberg associates target consumers with a brand "from a socio-economic perspective, from a morals and values perspective, from an age or interest level perspective, or based on other similar factors." Steelberg at ¶ 3. The Examiner does not contest whether the relationships between users and brands in Steelberg is explicit or implicit, and instead focuses on how claim 1 can supposedly be interpreted to include *connections indicating implicit relationships between users and brands*. This interpretation is improper and, therefore, the rejection of claim 1 as being anticipated by Steelberg should be reversed.

Reply Br. 14 (emphasis added).

Based upon our review of the record, we are not persuaded the Examiner's broader claim interpretation is overly broad, unreasonable, or inconsistent with the Specification, because the Examiner repeatedly refers to descriptions of exemplary, non-limiting embodiments found in the Specification for support. Ans. 6–7. Because "applicants may amend claims to narrow their scope, a broad construction during prosecution creates no

unfairness to the applicant or patentee.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citation omitted).

Therefore, on this record, we are not persuaded of error regarding the Examiner’s broad but reasonable claim interpretation, and resultant finding of anticipation regarding the contested limitations of representative independent claim 1. *See* Final Act. 5–6; Ans. 6–7.

Accordingly, we sustain anticipation rejection B of representative independent claim 1 over Steelberg. The remaining grouped claims 2–11, also rejected under anticipation rejection B, and not substantively argued separately, fall with representative independent claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*Anticipation Rejection C of Claims 12–16 over Trout*

Regarding anticipation rejection C of claim 12 over Trout, Appellants urge that “Trout does not disclose identifying one or more candidate brands to the advertising brand as potential endorsers.” App. Br. 16.

In support, Appellants contend: “at the very best, Trout discloses connections between users and brands, rather than between brands themselves. However, claim 12 recites “identifying ... one or more candidate brand connections **to the advertising brand** as potential endorsers of the advertising brand” and “modifying the social networking profile **associated with the advertising brand to include a connection to the designated subset of the selected candidate brand connections.**” App. Br. 16–17.

Appellants point to the corresponding support in the Specification (¶ 16) for the claim terms “brand” (App. Br. 17), and “endorsement”, which we find merely provides exemplary, non-limiting descriptions:

*Brand to brand, or "brand-brand," connections used for advertising are referred to herein as endorsements. An endorsement can comprise any positive relationship between brands in the social network. The endorsement can comprise a link between the brands in a social networking system. A brand can like, be a fan of, want, desire, use, or endorse another brand. As examples, a restaurant brand may indicate it serves a brand of liquor or cola. A movie star's public persona may wear a brand of sunglasses or "want" a new clothing line. A sports team visits particular away stadiums while a stadium hosts particular teams. The relationships formed between brands can be selected from a static list provided by the social networking system, or can be dynamically created by the brands. The social networking system may provide static options to define relationships between brands in order to ensure that relationships between brands are positive. Endorsements can be two-way (i.e. initiated by one brand and confirmed by another) or may be formed as one-way connections without confirmation.*

Spec. ¶ 16 (emphasis added).

Trout’s paragraph 54 describes that users of the social network are the endorsers of the brand: “Embodiments of the present invention enable brands to be promoted in an online social network environment.” As described in Appellants’ Specification (¶ 16), “*A brand can like, be a fan of, want, desire, use, or endorse another brand.*” (emphasis added). We find only a *user* can want, desire, and use. Therefore, we find Appellants’ arguments regarding rejection C of independent claim 12 (App. Br. 15–17) are essentially directed to similar claim interpretation issues we have addressed *supra* regarding independent claim 1.

For similar reasons discussed above, on this record, we are not persuaded the Examiner's broader claim interpretation is overly broad, unreasonable, or inconsistent with the Specification. *See ICON Health and Fitness*, 496 F.3d at 1379. Therefore, on this record, we are not persuaded of error regarding the Examiner's finding of anticipation for independent claim 12, under rejection C. The remaining grouped dependent claims 13–16, also rejected under anticipation rejection C, and not substantively argued separately, fall with representative independent claim 12. *See* 37 C.F.R. § 41.37(c)(1)(iv).

#### *Conclusions*

The Examiner did not err in rejecting claims 1–16 under 35 U.S.C. § 101, as being directed to patent-ineligible subject matter.

The Examiner did not err in rejecting claims 1–11, under pre-AIA 35 U.S.C. § 102(b), as being anticipated by Steelberg.

The Examiner did not err in rejecting claims 12–16, under pre-AIA 35 U.S.C. § 102(b), as being anticipated by Trout.

#### DECISION

We affirm the Examiner's decision rejecting claims 1–16.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED