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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* ANDREY YRUSKI and MURGESH NAVAR

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Appeal 2017-004335  
Application 11/586,959  
Technology Center 3600

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Before ELENI MANTIS MERCADER, LARRY J. HUME, and  
JASON M. REPKO, *Administrative Patent Judges*.

REPKO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 32, 34–40, 42, 44, 45, 49, and 51–54. Reply Br. 3.<sup>2</sup> Claims 1–31, 33, 41, 43, 46–48, and 50 were canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants identify the real party in interest as Sony Interactive Entertainment America LLC. App. Br. 3.

<sup>2</sup> Throughout this opinion, we refer to the Final Rejection (“Final Act.”) mailed January 29, 2016; the Appeal Brief (“App. Br.”) filed June 27, 2016; the Examiner’s Answer (“Ans.”) mailed November 17, 2016; and the Reply Brief (“Reply Br.”) filed January 17, 2017.

## THE INVENTION

Appellants' claimed invention relates to associating advertisement information with (1) media content and (2) users that receive the content over a network. Spec. ¶ 11. According to the Specification, the invention meets the need for an improved technique for targeting advertisements to podcast subscribers. *Id.* ¶ 10.

Claim 32 is reproduced below:

32. A method for resolving an advertisement rule to determine advertisement matching to content, the method comprising:

receiving information regarding an advertisement campaign provided by an advertisement provider server over a network, the advertisement campaign including a plurality of advertisements and associated with an advertisement rule for matching the advertisement campaign with content provided by a content provider server;

receiving information regarding a content attribute of the content provided by the content provider server over the network; and

executing instructions stored in memory, wherein execution of the instructions by a processor:

matches the advertisement campaign to the content attribute based on the advertisement rule,

periodically retrieves user usage information, wherein the user usage information is automatically transmitted by a software application at a user device, and wherein the user usage information includes play event and play duration data associated with each content feed to which a user of the user device is subscribed;

estimates a probability that the user device will play the content based on the retrieved user usage information, wherein the content is a content feed to which the user is subscribed,

selects an advertisement of the plurality of advertisements of the matching advertisement campaign for insertion into the content, the selected advertisement associated with metadata indicating a location where the selected advertisement is inserted relative to the content, wherein the location is measured from the start of the content when the location is within the content and the duration of the selected advertisement is within a length restriction when the selected advertisement is inserted into the content, wherein the advertisement is selected for insertion based on the user usage information, the estimated probability that the user device will play the content, and the length restriction, and wherein the content is associated with the selected advertisement when the content and the selected advertisement are delivered to the user device over the network,

delivers, in response to a request from the user device concerning the content, the content and the selected advertisement to the user device over the network, wherein the selected advertisement is delivered to the user device for storage,

receives a usage log regarding the user device playing a file comprising the content and the selected advertisement inserted into the content at the insertion location, the selected advertisement inserted by processing the metadata to identify the insertion location and by processing the content to find the insertion location, wherein the usage log indicates:

an ad play duration of the inserted advertisement, the ad play duration determined relative to an ad play starting point of the inserted advertisement at the insertion location, and

a content play duration of the content, wherein the content play duration is calculated to exclude ad play of the inserted advertisement at the insertion location within the content; and

generates a payment amount for the advertisement provider based on the usage log.

#### THE REJECTION

Claims 32, 34–40, 42, 44, 45, 49, and 51–54 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 2–6.

#### ANALYSIS

##### *Alice Step One*

The Supreme Court’s two-step framework guides our analysis. *See Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). According to step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Id.*

The Examiner finds representative<sup>3</sup> claim 32 is directed to an abstract idea. Final Act. 2. The Examiner explains that the claim is directed to targeting offers based on rules and conditions and estimating probability of a user event from activity data. *Id.*

Appellants disagree and argue that the claims are directed to a specific way to deliver digital-content files, dynamically splice them together, and determine which portions were actually played. App. Br. 7–10. Appellants argue the claims are similar to those found eligible in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) and *McRO, Inc. v. Bandai*

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<sup>3</sup> Appellants argue claims 32, 34–40, 42, 44, 45, 49, and 51–54 as a group. *See* App. Br. 7–11; Reply Br. 8. We select independent claim 32 as representative of claims 32, 34–40, 42, 44, 45, 49, and 51–54. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*Namco Games Am.*, 837 F.3d 1299 (Fed. Cir. 2016). *See* App. Br. 7–10; Reply Br. 3–4.

We disagree with Appellants that claim 32 is similar to *Enfish* and *McRO*. Claim 32 merely recites result-based functional language instead of a particular improvement in the system’s function or some technical solution. By contrast, the claims in *Enfish* were directed to a specific asserted improvement to a database’s capabilities. *See* 822 F.3d at 1335–36. Likewise, the claims in *McRO* were directed to an improvement to the way computers create animation. *See* 837 F.3d at 1314. Unlike the inventions in those cases, Appellants’ invention is purportedly an improved technique for targeting advertisements to content subscribers (Spec. ¶¶ 10–11), not an improvement to a computer’s functioning. *See* Final Act. 5.

Appellants disagree and explain that the claims involve a specific solution to a software-based problem. App. Br. 8–10 (citing Spec. ¶¶ 3–12, 98, 101); *see also* Reply Br. 6 (comparing digital content with traditional media). But Appellants’ argument is not commensurate with the claim. Claim 32 is broadly functional and result-oriented. In this way, the claims are more like those held to be abstract by the Federal Circuit. *See Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258–59 (Fed. Cir. 2016) (holding that the claims were directed to an abstract idea, and explaining that the claims recited “the function of wirelessly communicating regional broadcast content to an out-of-region recipient, not a particular way of performing that function”); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (holding the claims were directed to the abstract idea of “gathering and analyzing information of a specified content,

then displaying the results, and not any particular assertedly inventive technology for performing those functions.”).

For example, the recited method receives and matches the advertisement campaign and content attribute. Claim 32, however, does not describe how to achieve this match. Similarly, the claim further recites a probability estimate and generating a payment amount without any particular technical solution for doing so. Like the match, the probability estimate and the generated amount are claimed as a result. Therefore, we disagree that these limitations make claim 32 less abstract. *See Reply Br. 7.*

Furthermore, the claimed method uses a processor to select an advertisement. To be sure, there are several limitations on the selection—i.e., the advertisement must be associated with metadata, selected based on certain information, and more. Similarly, the claimed processor sends and receives information limited to a particular content. Yet “[i]nformation as such is an intangible.” *Elec. Power Grp.*, 830 F.3d at 1353. The Federal Circuit has “treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Id.* (citing *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014) and other cases). Likewise, limitations on the recited advertisements and transmitted data do not remove Appellants’ claim from the abstract-idea realm.

We agree with the Examiner that the claimed method is similar to other advertisement methods that the Federal Circuit has found to be directed to an abstract idea. Final Act. 2. For example, the Federal Circuit found that a “process of receiving copyrighted media, selecting an ad, offering the media in exchange for watching the selected ad, displaying the

ad, allowing the consumer access to the media, and receiving payment from the sponsor of the ad all describe an abstract idea.” *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014), *cited in* Ans. 3. Like the claims in *Ultramerical*, claim 32’s method selects ads, delivers the ads with content, and employs a usage log. As a whole, claim 32 uses rules to match the advertisements to content. Compared to *Ultramerical*, claim 32 manipulates similar data, solves a similar problem, and does so in a broadly abstract way. *Accord* Ans. 3.

Appellants argue that the Examiner erred by relying on the non-precedential decision in *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950 (Fed. Cir. 2014). Reply Br. 3–4. Notably, the Examiner’s reliance on *SmartGene* is cumulative. *See, e.g.*, Ans. 3 (citing *Ultramerical* and other cases). Nevertheless, apart from quoting the Examiner guidance, Appellants have not explained why the facts here do not match the facts at issue in *SmartGene*. *See* Reply Br. 3–4. Accordingly, Appellants have not persuaded us that the Examiner’s reliance on *SmartGene* is in error. *See id.*

On this record, we are unpersuaded that the Examiner erred in concluding that claim 32 is directed to an abstract idea.

#### *Alice Step Two*

Because the claims are “directed to an abstract idea,” we consider the claim limitations “both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)). The Supreme Court has described this analysis “as a search for an ‘inventive concept.’” *Alice*, 134 S. Ct. at 2355.

Appellants argue that the Examiner has not supported the conclusion that claim 32 amounts to an abstract idea without more. Reply Br. 7. We disagree. Here, the Examiner cites several court decisions in finding that receiving, accessing, and storing data are considered conventional computer functioning. *See* Ans. 3 (citing *Ultramercial*, *Alice*, and *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014)). In particular, the Federal Circuit has recognized that the function of “receiving or transmitting data” is well-understood, routine, and conventional. *buySAFE*, 765 F.3d at 1355 (explaining that the “computers in *Alice* were receiving and sending information over networks connecting the intermediary to the other institutions involved, and the Court found the claimed role of the computers insufficient”). On this record, the Examiner’s *Alice* step two analysis is adequately supported in this regard.

Appellants further contend that the claims recite operations that are impossible to carry out mentally. Reply Br. 8. According to Appellants, the claims recite a non-generic and unconventional arrangement that amounts to significantly more than any abstract idea. App. Br. 8, 10–11; Reply Br. 8.

Even if the claimed method cannot be carried out mentally, the recited physical and tangible components do not impart an inventive concept here. In particular, the claimed method begins by reciting two steps for receiving information regarding an advertising campaign and a content attribute. In these steps, the advertisement-provider server and content-provider server merely provide data. So, even if these servers are capable of performing specialized tasks (App. Br. 8), these tasks are not reflected in claim 32. Rather, the servers merely send data, which is conventional for the reasons discussed by the Examiner. *See* Ans. 3, *discussed supra*.

The claims also employ a “usage log” indicating an ad-play and a content-play duration. Notably, the *Ultramercial* court recognized that “[a]dding routine additional steps such as updating an *activity log* . . . and use of the Internet does not transform an otherwise abstract idea into patent-eligible subject matter.” *Ultramercial*, 772 F.3d at 716 (emphasis added). Moreover, Appellants’ usage log is used to store data similar to a conventional play log. *See, e.g.*, Spec. ¶ 155 (discussing how iTunes typically stores data in player play logs).

In view of their conventional use, neither the usage log nor the servers impart an inventive concept sufficient to transform the nature of Appellants’ claim into eligible subject matter, contrary to Appellants’ arguments (App. Br. 8; Reply Br. 7).

Appellants have not provided, nor do we find, any inventive concept even considering the limitations as an ordered combination. As discussed, claim 32 does not improve an existing technological process. *See* Final Act. 4–5. Instead, the invention’s purported improvement is targeting advertisements to podcast subscribers. Spec. ¶¶ 10–11. To this end, the claim’s recited computer components contribute little to a technology-based solution, which Appellants argue is present (*see* Reply Br. 6). Specifically, the recited servers and processor send and receive data, and the processor further matches information, estimates a probability, and selects advertisements. That is, rather than reciting a particular way to achieve the desired matching, estimating, or selecting, claim 32 merely recites the outcomes. As an ordered combination, the computer components transfer the data and carry out the abstract idea. So, considering the claim as a whole and noting the claim’s broad functional language, we are unpersuaded that

the Examiner's characterization is overbroad, as Appellants argue (App. Br. 8; Reply Br. 3–6). On this record, we agree with the Examiner that the recited combination of elements does not add meaningful limitations to the abstract idea that the Examiner identified in *Alice* step one. *See* Final Act. 4–5.

Therefore, Appellants have not persuaded us of error in the rejection of independent claim 32 under 35 U.S.C. § 101, or the rejection of claims 34–40, 42, 44, 45, 49, and 51–54, which are grouped with claim 32. *See* App. Br. 7–11; Reply Br. 8.

#### DECISION

We affirm the Examiner's rejection of claims 32, 34–40, 42, 44, 45, 49, and 51–54.

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