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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* SEAN BECKNER and MATTHEW BECKNER

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Appeal 2017-005870  
Application 13/485,440  
Technology Center 3600

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Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE<sup>1</sup>

Sean Beckner and Matthew Beckner (Appellants)<sup>2</sup> seek review under 35 U.S.C. § 134 of a final rejection of claims 22, 26–28, 35, 40–43, 45–47, 49, 50, and 52–57, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellants invented a way of promoting business goods and services to a user via an interface device of the user, and more specifically,

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<sup>1</sup> Our decision will make reference to the Appellants' Appeal Brief ("Br.," filed April 11, 2016) and the Examiner's Answer ("Ans.," mailed August 3, 2016), and Final Action ("Final Act.," mailed June 9, 2015).

<sup>2</sup> Appellants identify Front Flip, LLC as the real party in interest. Br. 3.

of offering a gift from the business to the user, allowing the user to transfer or share the gift with another user, and allowing the user to redeem the gift at the business. Specification para. 3.

An understanding of the invention can be derived from a reading of exemplary claim 22, which is reproduced below (bracketed matter and some paragraphing added).

22. A method of incentivizing and tracking patronage of a consumer by providing a gift of a merchant that can be retrieved by the consumer via a communication network, the method comprising the steps of:

[1] assigning a barcode to the merchant;

[2] assigning a redemption rate for odds of winning the gift to the gift of the merchant;

[3] assigning a digital scratch card to the gift of the merchant;

[4] obtaining information related to the consumer from a computing device of the consumer

when the consumer scans the barcode using the computing device of the consumer,

the information related to the consumer including patronage data of the consumer;

[5] determining via a processor whether to offer the gift to the consumer

based on the redemption rate of the gift and the patronage data of the consumer;

[6] transmitting the digital scratch card to the computing device of the consumer via the communication network

when the consumer scans the barcode using the computing device;

[7] displaying the digital scratch card on a display of the computing device;

[8] revealing a result of the determination regarding whether to offer the gift to the consumer via the computing device

when the consumer physically manipulates the digital scratch card using the computing device

by displaying on the display of the computing device either

(i) a gift token indicating the consumer has won the gift, or

(ii) a notification of loss indicating the consumer has not won the gift;

and

[9] tracking one or more factors using the barcode including

(i) a number of times the barcode is scanned,

(ii) a number of times the gift token is redeemed or submitted to the merchant by the consumer to obtain the gift won by the consumer,

(iii) a redemption rate of the consumer,

and/or

(iv) a number of times the gift token is forwarded or re-distributed, wherein, the gift is a free or discounted good or service offered by the merchant, and the patronage data includes at least one of

(i) when the consumer patronizes the merchant,

(ii) where the consumer patronizes the merchant,

(iii) frequency of patronage of the consumer at the merchant,

and

(iv) average monetary purchase of the consumer at the merchant.

The Examiner relies upon the following prior art:

Wolf	US 2002/0117544 A1	Aug. 29, 2002
Blair	US 2010/0137053 A1	June 3, 2010
Leung	US 7,769,634 B2	Aug. 3, 2010

iScratcher.com Web Pages (2010) (hereinafter “iSWeb”)

Claims 22, 26–28, 35, 40–43, 45–47, 49, 50, and 52–57 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 22, 28, 35, 40, 42, 43, 45–47, 49, 50, and 52–57 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Thunder, LLC.’s iScratcher product (as evidenced by Blair and iSWeb) and Wolf.

Claims 26, 27, and 41 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Thunder, LLC.’s iScratcher product (as evidenced by Blair and iSWeb), Wolf, and Leung.

#### ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of obviousness turn primarily on whether the prior art describes scanning a bar code representing a merchant and in response, obtaining information from the customer device and transmitting a digital scratch card.

#### FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

*Facts Related to Claim Construction*

01. The disclosure contains no lexicographic definition of “digital scratch card.”
02. The ordinary meaning of a “scratch card” is “a lottery ticket played by scratching or scraping designated areas to reveal information used in determining the card's prize value.”<sup>3</sup>

*Facts Related to the Prior Art*

*Blair*

03. Blair is directed to displaying advertising to mobile user. Blair para. 4.
04. Blair describes uploading logon information from a mobile device to a server, wherein the logon information contains at least a geographical location identifier, downloading a current electronic scratch off game to the mobile device from the central server, wherein the current electronic scratch off game corresponds to the geographical location identifier, displaying a foreground image to a user of the mobile device, and receiving a wiping input from the user of the mobile device on a touch screen of the mobile device. Blair further describes removing a portion of the foreground image corresponding to the wiping input, displaying background image in areas corresponding to the wiping input, displaying a win or loss indicator, and using the win

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<sup>3</sup> Definition of “scratch ticket” (redirected from “scratch card”). The American Heritage Dictionary of the English Language (2018), <https://www.ahdictionary.com/word/search.html?q=scratch+ticket>.

indicator at a retail sponsor advertising location to obtain a prize or item of value. Blair para. 4.

05. Blair describes the user presenting a prize code (display the code on the mobile devices screen) or other identifying indicia that is associated with a particular prize, once at the retail location. The mobile device may be configured to display a bar code on the screen of the mobile device, and the retail location may scan in the displayed barcode to facilitate the prize redemption process. Once a prize code or bar code is presented to the retail location, the retail location will generally have a computer or other electronic terminal configured to communicate with a validation source for the prize or bar code. For example, a retail location may have the prize or barcodes programmed into their merchandising systems such that when a barcode or prize code is presented it can be validated against the retail locations own records for prizes to be distributed. Blair para. 34.

*iSWeb*

06. iSWeb is directed to describing a mobile app called iScratcher. iSWeb 1.

*Wolf*

07. Wolf is directed to wireless coupon-dispensing devices. Wolf para. 3.

## ANALYSIS

We begin by construing the limitation “digital scratch card.” This is not lexicographically defined and has no conventional meaning. The ordinary meaning of a “scratch card” is a lottery ticket played by scratching or scraping designated areas to reveal information used in determining the card’s prize value. As digital data, being intangible, is incapable of being scratched or scraped, the limitation “digital scratch card” is self-contradictory on its face. As the invention is in the realm of marketing promotion, however, we take the phrase to be metaphoric rather than literal. We thus construe “digital scratch card” as a digital metaphor for such a card being digitally represented with some conventional computer action metaphorically representing such scratching and scraping. This is consistent with how the term is used in the Specification. *See, e.g.*, Spec. ¶ 68.

*Claims 22, 26–28, 35, 40–43, 45–47, 49, 50, and 52–57 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more*

### STEP 1<sup>4</sup>

Claim 22, as a method claim, recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

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<sup>4</sup> For continuity of analysis, we adopt the steps nomenclature from 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019).

STEP 2

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a 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.”

*Alice Corp. Pty. Ltd. v CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014)

(alteration in original) (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

Method claim 22 recites assigning barcode, redemption rate, winning odds, and digital scratch card data, obtaining information, determining whether to offer a gift, transmitting and displaying the digital scratch card data, revealing a result after entering data that simulates playing the card, and tracking factors. Thus, claim 22 recites assigning, receiving, analyzing, transmitting, displaying, modifying, and storing data. None of the limitations recite technological implementation details for any of these steps, but instead recite only functional results to be achieved by any and all possible means.

From this we see that claim 22 does not recite the judicial exceptions of either natural phenomena or laws of nature. The next issue is whether it recites the judicial exception of an abstract idea. To answer this, we next determine whether it recites one of the concepts the Courts have held to be lacking practical application, *viz.* mathematical concepts,<sup>5</sup> certain methods of organizing human interactions,<sup>6</sup> including fundamental economic practices and business activities, or mental processes.<sup>7</sup>

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<sup>5</sup> See, e.g., *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

<sup>6</sup> See, e.g., *Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219–20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *Smart Systems Innovations, LLC v. Chicago Transit Authority*, 873 F.3d 1364, 1383 (Fed. Cir. 2017); *In re Marco Guldenaar Holding B.V.*, No. 2017-2465, 2018 WL 6816331 (Fed. Cir. Dec. 28, 2018).

<sup>7</sup> See, e.g., *Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–1372 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

The Examiner determines the claims to be directed to incentivizing a consumer to patronize a merchant by providing an incentive in terms of a gift selected by the merchant comprising wholly generic computers. Office Action mailed March 26, 2015 (hereinafter “Office Action”), 5.<sup>8</sup>

The preamble to claim 22 recites that it is a method of incentivizing and tracking patronage of a consumer by providing a gift of a merchant that can be retrieved by the consumer via a communication network. The steps in claim 22 result in notifying a consumer that he/she has won or lost a gift from a marketing promotion by digitally simulating a scratch card play, absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1–4, 6, and 7 recite insignificant assigning, receiving, analyzing, transmitting, displaying, modifying, and storing of merchant transaction data, which advise one to apply generic functions to get to these results. Limitations 5, 8, and 9 recite determining whether to offer a gift using some input, displaying the result of the determination, and recording data associated with the transaction with that of prior transactions. The focus of the claim is a promotion that simply notifies a consumer that he/she has won or lost a gift from a marketing promotion by digitally simulating a scratch card play. To advocate such a promotion is conceptual advice for results to be obtained, and not technological operations.

The Specification at paragraph 3 recites that the invention relates to promoting business goods and services to a user via an interface device of

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<sup>8</sup> This action is an earlier Examiner’s Answer. The Final Action refers to this action for the entirety of the § 101 analysis. Final Act. 2.

the user, and more specifically to offering a gift from the business to the user, allowing the user to transfer or share the gift with another user, and allowing the user to redeem the gift at the business. Thus, all this intrinsic evidence shows that claim 22 is directed to promoting business goods and services to a user, and more specifically, to offering a gift from the business to the user, i.e., a marketing promotion. This is consistent with the Examiner's determination.

The concept of a marketing promotion is a fundamental business practice long prevalent in our system of commerce. The use of a marketing promotion is also a building block of ingenuity in marketing and sales. Thus, a marketing promotion is an example of a conceptual idea subject to the Supreme Court's "concern that patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity." *Alice*, 573 U.S. at 216 (citations omitted). Claim 22 recites the idea of performing various conceptual steps generically resulting in the marketing promotion. As we determined earlier, none of these steps recite specific technological implementation details, but instead get to this result by advising one to notify a consumer that he/she has won or lost a gift from a marketing promotion digitally simulating a scratch card play. Thus, claim 22 is directed to marketing promotion, which is a fundamental business practice.

This, in turn, is an example of marketing as a certain method of organizing human interactions because marketing promotions are a large part of using marketing to get customers.

The concept of a marketing promotion as advised to be done by notifying a consumer that he/she has won or lost a gift from a marketing

promotion digitally simulating a scratch card play is a way of creating sales awards as marketing promotions to organize customer behavior toward increased opportunities for such awards. The steps recited in claim 22 are part of more precisely targeting such promotions to better organize customer sales activities.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (using advertising).

Alternately, this is an example of concepts performed in the human mind as mental processes because the steps of assigning, receiving, analyzing, transmitting, displaying, modifying, and storing data mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 22, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data assignment, reception, analysis, transmission, display, modification, and storage and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 22 is directed to the abstract idea of assigning, receiving, analyzing, transmitting, displaying, modifying, and storing data, and not a technological implementation or application of that idea.

From this we conclude that, at least to this degree, claim 22 is directed to the abstract idea of marketing promotion by advising one to notify a consumer that he/she has won or lost a gift from a marketing promotion digitally simulating a scratch card play.

STEP 2A Prong 2

The next issue is whether claim 22 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept, i.e., integrated into a practical application.<sup>9</sup>

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, “all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. “[A]pplication[s]” of such concepts “to a new and useful end,” we have said, remain eligible for patent protection.

Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the “buildin[g] block[s]” of human ingenuity and those that integrate the building blocks into something more . . . .

*Alice*, 573 U.S. at 217 (alterations in original) (citations omitted).

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an

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<sup>9</sup> See, e.g., *Alice*, 573 U.S. at 223 (discussing *Diamond v. Diehr*, 450 U.S. 175 (1981)).

abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice*, 573 U.S. at 223–24 (second, third, and fourth alterations in original) (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. Claim 22 does not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely functional, devoid of implementation details. Steps 1–4 are pure data gathering steps. Limitations describing the nature of the data do not alter this. Steps 6 and 7 are insignificant post solution activity, such as storing, transmitting, or displaying the results. Steps 5, 8, and 9 recite generic computer processing expressed in functional terms to be performed by any and all possible means and so present no more than abstract conceptual advice. All purported inventive aspects reside in how the data is interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellants' method claim 22 simply recites the concept of marketing promotion as performed by a generic computer. To be sure, claim 22 recites doing so by advising one to notify a consumer that he/she has won or lost a gift from a marketing promotion by digitally simulating a scratch card play. But this is no more than abstract conceptual advice on the parameters for such marketing promotion and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method claim does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The 23-plus pages of specification spell out different generic equipment<sup>10</sup> and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of marketing promotion under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, claim 22 amounts to nothing significantly more than an instruction to apply the abstract idea of marketing promotion by advising one to notify a consumer that he/she has won or lost a gift from a marketing promotion digitally simulating a scratch card play using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

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<sup>10</sup> The Specification describes mobile device as being one of (i) a personal computing device, (ii) a smart phone, (iii) a cellular phone, and (iv) a personal computer. Spec. para. 15.

None of the limitations reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field, applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition, implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim, effects a transformation or reduction of a particular article to a different state or thing, or applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

We conclude that claim 22 is directed to advising one to notify a consumer that he/she has won or lost a gift from a marketing promotion by digitally simulating a scratch card play to achieve the functional result of marketing promotion as distinguished from a technological improvement for achieving or applying that result. The claim does not integrate the judicial exception into a practical application.

#### STEP 2B

The next issue is whether the claim provides an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception. Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for assigning, receiving, analyzing, transmitting, displaying, modifying, and storing data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are generic, routine, conventional

computer activities that are performed only for their conventional uses. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *See also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”). None of these activities are used in some unconventional manner nor do any produce some unexpected result. Appellants do not contend they invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP America, Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellants’ method claim adds nothing that is not already present when the steps are considered separately. The sequence of data assignment–reception–analysis–transmission–display–modification–storage is equally generic and conventional or otherwise held to be abstract. *See Ultramercial*, 772 F.3d at 715 (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission); *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of

processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

We conclude that claim 22 does not provide an inventive concept because the additional elements recited in the claims do not provide significantly more than the recited judicial exception.

#### REMAINING CLAIMS

The other independent method claim is substantially similar at least as it regards this analysis. The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

#### LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of marketing promotion, without significantly more.

#### APPELLANTS' ARGUMENTS

As to Appellants' Appeal Brief arguments, we adopt the Examiner's determinations and analysis from the Office Action 3–7 and Answer 3–12 and reach similar legal conclusions.

In particular, we are not persuaded by Appellants' argument that Appellants respectfully submit that independent claim 22 recites much more and goes far beyond than what is argued by the Office. Indeed, the present inventive concept is directed to a sophisticated, novel, and non-obvious system that provides,

among other things, a valuable transfer of consumer demographic information from a consumer to a merchant in exchange for an opportunity to win a gift from the merchant via physical manipulation of a digital scratch card on a device of the consumer, which advantageously allows the merchant to identify and process consumer demographics and establishing communication with each of its consumers, among other things. Indeed, the art of record fails to meet all of the recitations of independent claim 22 as detailed hereafter.

Br. 7. As to whether the art of record meets the limitation, “a claim for a *new* abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). A valuable transfer of information is still information transfer, an abstract idea. The physical manipulation is conventional data entry using some pointing device, such as a finger, stylus, or mouse. The claims do not recite any technological implementations, but rather functional results to be achieved by any and all means.

At that level of generality, the claims do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution to an identified problem. The purely functional nature of the claim confirms that it is directed to an abstract idea, not to a concrete embodiment of that idea.

*Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016).

*Claims 22, 28, 35, 40, 42, 43, 45–47, 49, 50, and 52–57 rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Thunder, LLC.’s iScratcher product (as evidenced by Blair and iSWeb) and Wolf*

We are persuaded by Appellants’ argument that

[a]llowing a retailer to scan a barcode displayed by a device of a customer to award the customer a prize is not the same as the present inventive concept, which utilizes a barcode that, when scanned by a device of a consumer, causes (a) consumer information to be obtained from the device of a consumer.

Br. 11. Blair only scans a bar code representing an entry on the scratch card. iSWeb only refers to using barcodes for redemption. Wolf only refers to barcodes for products. The claims recite scanning a barcode assigned to the merchant and obtaining information from the consumer's device and transmitting the digital scratch card at that time. This is prior to when the customer reveals (scratches) an entry and so is not described by Blair or iSWeb. Scanning a product code in Wolf does not transmit a scratch card.

The Examiner responds that the references describe each of the recited step actions. Ans. 13–16. We disagree. The Examiner does not make findings that the specific action results and sequence recited we refer to *supra* are so described. As such, the Examiner fails to present a prima facie case.

*Claims 26, 27, and 41 rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Thunder, LLC's iScratcher product (as evidenced by Blair and iSWeb), Wolf, and Leung*

These claims depend from the claims in the prior rejection

#### CONCLUSIONS OF LAW

The rejection of claims 22, 26–28, 35, 40–43, 45–47, 49, 50, and 52–57 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 22, 28, 35, 40, 42, 43, 45–47, 49, 50, and 52–57 under 35 U.S.C. § 103(a) as unpatentable over Mobile Thunder, LLC.'s iScratcher product (as evidenced by Blair and iSWeb) and Wolf is improper.

Appeal 2017-005870  
Application 13/485,440

The rejection of claims 26, 27, and 41 under 35 U.S.C. § 103(a) as unpatentable over Mobile Thunder, LLC.'s iScratcher product (as evidenced by Blair and iSWeb), Wolf, and Leung is improper.

DECISION

The rejection of claims 22, 26–28, 35, 40–43, 45–47, 49, 50, and 52–57 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED