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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* ALEXANDER HARLEY FRASER,  
JOHN BLOBNER, LANCE RIGDON,  
KRISTA GAYLE WRIGHT, VERONICA YUNG SU TAI,  
RICHARD NEIL MACCONNELL, and  
AMY ANDREWS MILLS

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Appeal 2017-006219  
Application 13/835,430  
Technology Center 3600

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Before HUNG H. BUI, JOYCE CRAIG, and AARON W. MOORE,  
*Administrative Patent Judges.*

CRAIG, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1–10, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> According to Appellants, the real party in interest is Manheim Investments, Inc. App. Br. 1.

## INVENTION

Appellants' invention relates to live auctioneer led sales of products between remotely located buyers, sellers, and auctioneers. Spec., Abstract. Claim 1 is illustrative and reads as follows:

1. A method, comprising:

receiving, by one or more computers comprising one or more processors, information associated with one or more vehicles in a seller's inventory;

providing over a network, by the one or more computers, the information associated with the one or more vehicles in the seller's inventory for display to one or more buyer computing devices;

receiving, by the one or more computers, an indication of an interest to purchase at least one of the one or more vehicles in the seller's inventory from the one or more buyer computing devices, wherein the interest to purchase the at least one vehicle comprises a request to offer the at least one vehicle up for sale at a virtual auction;

identifying, by the one or more computers and based at least in part on the interest to purchase the at least one vehicle, a virtual auction to sell the at least one vehicle;

placing, by the one or more computers and based at least in part on the interest to purchase the at least one vehicle, the at least one vehicle in the identified virtual auction;

conducting, by the one or more computers, a live virtual auction of the at least one vehicle, wherein the live virtual auction comprises a signal indicative of a live auctioneer conducting a sale of the at least one vehicle by auction from an auctioneer computing device, wherein the signal comprises one or more of a real-time audio signal, a video signal, or a combination thereof of the live auctioneer conducting the sale of one of the at least one vehicle by virtual auction;

providing, by the one or more computers, the signal indicative of the live auctioneer conducting the sale of one of the

at least one vehicle by virtual auction to the one or more buyer computing devices, wherein at least one of the auctioneer computing device, the one or more buyer computing devices, and the at least one vehicle are geographically remotely located from one another;

receiving, by the one or more computers, one or more bids for the at least one vehicles from the one or more buyer computing devices;

providing, by the one or more computers during the bidding process, a virtual ringman comprising a pop up window or a float-over element that identifies one or more features of interest associated with the vehicle up for virtual auction, wherein the virtual ringman is customizable;

receiving, by the one or more computers, an indication from the auctioneer computing device that bidding is over; and

enabling, by the one or more computers, the live auctioneer to (1) sell the car based on one of the one or more bids or (2) open the virtual auction back up for bidding.

## REJECTION

Claims 1–10 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception to patentability, without significantly more. Non-Final Act. 3–5.

## ANALYSIS

We have reviewed the rejections of claims 1–10 in light of Appellants' arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments Appellants could have made, but chose not to make, in the Briefs are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants' arguments are not persuasive of error. We agree with and adopt as our own the Examiner's findings of fact and conclusions as set forth in the Answer (Ans. 4–8) and in the Action (Non-Final Act. 3–5) from which this appeal was taken. We provide the following explanation for emphasis.

Under 35 U.S.C. § 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. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 76–77 (2012)).

In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See id.* at 2356. If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Id.* at 2355. This is a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* (internal quotations and citation omitted). The Court acknowledged in *Mayo* that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural

phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

In rejecting independent claims 1 and 10, and dependent claims 2–9, under 35 U.S.C. § 101, the Examiner determined the claims are directed to an abstract idea of “conducting an auction,” i.e., a “fundamental economic practice.” Non-Final Act. 3–4. The Examiner also determined the claims as a whole do not amount to significantly more than the abstract idea itself. *Id.* at 4–5. In particular, the Examiner determined the Specification sets forth that the technological elements recited by the claims are generic, that there is no indication those elements, when considered in combination, move beyond a generic networked environment, and that the claims do not set forth the specific technical functions required to perform each of the claimed operations. *Id.* at 4. The Examiner concluded the additional elements merely link the abstract idea of conducting an auction to the recited generic technological environments, and do not amount to significantly more than the abstract idea. *Id.* at 4–5.

Appellants first contend the Examiner did not make a *prima facie* case of patent ineligibility because the Examiner failed to provide “any evidentiary support for the allegation that the claims are directed to any abstract idea.” App. Br. 4 (citing *Ex parte Poisson*, Appeal 2012-011084 (PTAB Feb. 26, 2015)).

We disagree. Patent eligibility under 35 U.S.C. § 101 is a question of law that is reviewable *de novo*. *See Dealertrack, Inc. v. Huber*, 674 F.3d

1315, 1333 (Fed. Cir. 2012). We are aware of no controlling authority that requires the Office to provide factual evidence under step one of the *Alice* framework to support a determination that a claim is directed to an abstract idea. Nor, contrary to Appellant’s suggestion (App. Br. 4), did this Board hold in *Ex parte Poisson* that there is any such requirement. Instead, the Federal Circuit has repeatedly noted that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)).

The Examiner satisfies the burden of establishing a *prima facie* case under 35 U.S.C. § 132 by setting forth a rejection in a sufficiently articulate and informative manner. *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). If the Examiner “adequately explain[s] the shortcomings . . . the burden shifts to the applicant to rebut the prima facie case with evidence and/or argument.” *Hyatt*, 492 F.3d at 1370. The Non-Final Office Action adequately explains the § 101 rejection. *See* Non-Final Act. 3–5. The Examiner’s statements satisfy § 132(a) because they apply the *Mayo/Alice* analytical framework and apprise Appellants of the reasons for the § 101 rejection under that framework. Appellants have not responded by alleging a failure to understand the rejection. To the contrary, Appellants clearly identify the abstract idea. *See, e.g.*, App. Br. 3, 5.

#### *Alice* step 1: Abstract Idea

As to the first step of the *Alice* inquiry, Appellants contend independent claims 1 and 10 are not directed to “a fundamental economic practice,” i.e., an abstract idea. App. Br. 7. Instead, Appellants argue the claims address “the computer-centric challenge of providing live auctioneer

functionality for a digital online auction between remotely located participants and items, including a customizable virtual ringman comprising a pop-up window or a float-over element that identifies one or more features of interest associated with the vehicle up for virtual auction.” *Id.* (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). Appellants further argue the claims address “a technical challenge of providing live auctioneer functionality to ensure price realization of the item being sold in a digital online auction of remotely located participants and preventing sniping,” which does not arise in the “brick and mortar” context, but instead is rooted in computer technology. *Id.*

We are not persuaded by Appellants’ arguments. As the Examiner correctly recognized, Appellants’ claims 1 and 10, when considered in light of Appellants’ Specification, (1) address “commercial problems that each exist in in-person auctions, and not technical problems with the manner in which any particular technology functions” (Ans. 6); (2) recite a process that receives information about vehicles for sale, receives an indication of interest in a vehicle, identifies an auction to sell the vehicle, placing the vehicle in the auction, and conducting the auction with various features (signal indicating live auctioneer actions, bidding process, virtual ringman indicating features of interest, enabling sale of vehicle, etc.) (Non-Final Act. 3–4); and (3) do not amount to an improvement to another technology or technical field, do not amount to an improvement to the functioning of a computer itself, and do not move beyond a general link of the use of an abstract idea to a particular technological environment (*id.* at 3). We agree with the Examiner that the claims are directed to “conducting an auction,”

which is a fundamental practice and an “abstract idea.” *See Bilski v. Kappos*, 130 S. Ct. 3218 (2010).

Contrary to Appellants’ arguments, none of the steps recited in claims 1 and 10 seeks to improve computer functionality. “[P]roviding live auctioneer functionality to ensure price realization of the item being sold in a digital online auction of remotely located participants and preventing sniping” is not the same as improving computer functionality. *See* App. Br. 7. In fact, none of the steps recited in claims 1 and 10 provides: (1) a “solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” as explained by the Federal Circuit in *DDR Holdings*, 113 F.3d at 1257, (2) “a specific improvement to the way computers operate,” as explained in *Enfish*, 822 F.3d at 1336, or (3) an “unconventional technological solution . . . to a technological problem” that “improve[s] the performance of the system itself,” as explained in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300 (Fed. Cir. 2016).

*Alice* step 2: Inventive Concept

As to the second step of the *Alice* inquiry, Appellants argue the recited features of claims 1 and 10 amount to “significantly more” than a mere abstract idea. App. Br. 10. According to Appellants, the claims:

provide an inventive concept of facilitating a live auction between remote parties in an online auction by providing a real-time audio signal of the live auctioneer, by providing a customizable virtual ringman comprising a pop up window or a float-over element that identifies one or more features of interest associated with the vehicle up for virtual auction, and by preventing sniping.

*Id.*

Appellants' arguments are not persuasive. We find nothing in Appellants' claims 1 and 10 that adds anything "significantly more" to transform the abstract concept of conducting an auction. *Alice*, 134 S. Ct. at 2357. Appellants do not argue that any of the elements of claims 1 and 10 are individually inventive. *See* App. Br. 10. Nor do Appellants argue the ordered combination of these elements is inventive. *Id.* Limiting an abstract concept to generic components such as "a computer" and "a network" for operation in the manner recited in claims 1 and 10 does not make the abstract concept patent-eligible under 35 U.S.C. § 101. As recognized by the Supreme Court, "the mere recitation of a generic computer cannot transform a patent ineligible abstract idea into a patent-eligible invention." *See Alice*, 134 S. Ct. at 2359 (concluding claims "simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer" not patent eligible); *see also Ultramercial*, 772 F.3d 709, 715-16 (Fed. Cir. 2014) (Claims merely reciting abstract idea of using advertising as currency as applied to particular technological environment of the Internet not patent eligible.); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344-45 (Fed. Cir. 2013) (Claims reciting "generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer" not patent eligible.); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333-34 (Fed. Cir. 2012) ("Simply adding a 'computer aided' limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible.").

Appellants also contend “the fact that the Office Action indicates that the claims are allowable over the prior art is proof that the claims amount to significantly more than an abstract idea.” App. Br. 10. However, it is not enough for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art, passing muster under 35 U.S.C. §§ 102 and 103. *See Mayo*, 566 U.S. at 89–90; *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[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.”); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016) (same for obviousness).

Finally, Appellants contend that, “to be an abstract idea, the idea must be so broad as to ‘preempt use of this approach in all fields.’” App. Br. 11 (citing *Bilski*, 561 U.S. at 611–12). This argument is not persuasive because, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter” under the *Alice/Mayo* framework, “preemption concerns are fully addressed and made moot.” *Id.*

Because Appellants’ claims 1–10 are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of these claims under 35 U.S.C. § 101.

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DECISION

We affirm the Examiner's decision rejecting claims 1–10.

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