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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* QASIM SAIFEE, STEVE DANG, and  
BRIAN DOLAN

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Appeal 2017-007287<sup>1</sup>  
Application 11/644,127  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and  
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 3–6, 8–11, 14–21, 24, 26, and 28–31. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

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<sup>1</sup> The Appellants identify YAHOO! INC. as the real party in interest.  
Appeal Br. 2.

The invention relates generally to a system and method for analyzing one or more publishers of advertisements. Spec. ¶ 12.

Claim 1 is illustrative:

1. A computerized method of measuring quality of a publisher that displays a page over a network, the method comprising:

receiving publisher data that comprises a conversion variable and a traffic quality variable that reflects a quality of traffic that is viewing a page of the publisher; and

calculating, with a processor, a publisher score for a particular publisher based on the publisher data, wherein the particular publisher displays advertisements from one or more advertisement providers and the publisher score for the particular publisher comprises a reflection of success of the displayed advertisements from the particular publisher that is based on the publisher data;

wherein the calculating with the processor further comprises:

normalizing the data for each of the variables;

determining a standard deviation from the mean for each of the normalized variables;

transforming the standard deviation into a raw score for each of the normalized variables, wherein the transformed variables each comprise a corresponding raw score;

multiplying each of the transformed variables by a weight associated with the variable; and

combining each of the weighted, transformed variables to calculate the publisher score.

## REJECTIONS

The Examiner rejected claims 1, 3–6, 8–11, 14–21, 24, 26, and 28–31 under 35 U.S.C. § 101 as directed to ineligible subject matter in the form of abstract ideas.

The Examiner rejected claims 24, 26, and 28 under 35 U.S.C. § 102(e) as anticipated by Lipsky et al. (US 7,031,932 B1, iss. Apr. 18, 2006) (“Lipsky”).

The Examiner rejected claims 1, 3–6, 8–11, and 14–21 under 35 U.S.C. § 103(a) as unpatentable over Desikan et al. (US 7,788,132 B2, iss. Aug. 31, 2010) (“Desikan”) and Lipsky.<sup>2</sup>

The Examiner rejected claim 29 under 35 U.S.C. § 103(a) as unpatentable over DeBusk et al. (US 2002/0072971 A1, pub. June 13, 2002) (“DeBusk”) and Desikan.

The Examiner rejected claims 30 and 31 under 35 U.S.C. § 103(a) as unpatentable over DeBusk, Desikan, and “Gransville.”<sup>3</sup>

We AFFIRM.

## ANALYSIS

### Patentable subject matter

### Principles of Law

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 implicit

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<sup>2</sup> Although the final Office Action only lists claims 1, 3–6, 9, 10, and 14–21 as being rejected (Final Rej. 6), the Examiner does also analyze claims 8 and 11 under this rejection. Final Rej. 7. Accordingly, we treat the omission of claims 8 and 11 from the listing of claims as inadvertent.

<sup>3</sup> The Examiner does not provide further identifying information on the “Gransville” reference. See Final Act. 10. The Appellants opine that the Examiner meant to cite Granville (US 2007/0192190 A1, pub. Aug. 16, 2007). App. Br. 16. We agree with the Appellants, and, hereinafter, will treat “Gransville” as referring to “Granville.” We appreciate the Appellants’ diligence and candor.

exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. 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*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70–71 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (“Analyzing respondents’ claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter.”); *Parker v. Flook*, 437 U.S. 584, 594–95 (1978) (“Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) (“They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.”).

The following method is then used to determine whether the claim is “directed to” an abstract idea:

[T]he decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were

decided. *See, e.g., Elec. Power Grp.*, 830 F.3d at 1353–54. That is the classic common law methodology for creating law when a single governing definitional context is not available. *See generally* Karl N. Llewellyn, *The Common Law Tradition: Deciding Appeals* (1960). This more flexible approach is also the approach employed by the Supreme Court. *See Alice*, 134 S. Ct. at 2355–57. We shall follow that approach here.

*Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016).

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Flook*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Benson*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber, *Diamond*, 450 U.S. at 184 n.7, “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,” and a process for manufacturing flour, *Gottschalk*, 409 U.S. at 67.

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. *Alice*, 134 S. Ct. 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.*

The Appellants argue all claims together as a group. Appeal Br. 6–11. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds claim 1 is directed to the abstract idea of “calculating [a] score,” which encompasses both mental processes and

mathematical concepts. Final Act. 2. The Examiner also finds the claims are similar to those found abstract in “Cyberfone” and “SmartGene” (*id.*) as well as “Classen,” “CyberSource,” and “Maucorps” (Answer 2).

We are unpersuaded by the Appellants’ arguments that the Examiner has oversimplified the claim language in determining it is directed to the abstract idea of calculating a score. Appeal Br. 6–7. Claim 1 recites steps that receive data, and then calculate a score by performing normalization on the input data, calculating standard deviations, using the data to establish a “raw score,” multiplying, and combining results into a final score. Nothing in the claim, including requiring the calculating should be performed “with a processor,” falls outside the scope of “calculating a score.” Thus, we are unpersuaded that the Examiner has oversimplified the claim when determining to what it is directed to.

We are not persuaded that instead of being directed to an abstract idea, the claim is instead directed to an improvement in the transmission and serving of web pages and advertisements within those web pages. Appeal Br. 7–8. Nothing within the scope of claim 1 recites any changes to web page transmission techniques, or to the serving of web pages or advertisements. Instead, the claim only recites steps to calculate a score, where the score is not utilized functionally within the scope of claim 1 or any dependent claim.

Similarly, we are unpersuaded by the Appellants’ argument, when addressing whether the claims recite features that provide “something more” to transform the abstract idea into eligible subject matter, that the claims provide a technical improvement in the transmission and serving of web pages and advertisements. Appeal Br. 9; *see also* Reply Br. 4. The claims

do not affect the transmission of web pages or advertisements, because the only action the claims recite is calculating a score.

For these reasons, the Appellants have failed to show error in the Examiner's rejection of claims as directed to abstract ideas. Thus, we sustain the rejection under 35 U.S.C. § 101.

*Rejection of Claims 24, 26, and 28 under 35 U.S.C. § 102(e)*

We are not persuaded by the Appellants' argument that Lipsky discloses scoring an advertisement campaign, but not scoring publishers, as claimed, because, according to the Appellants, Lipsky "fails to disclose the **publisher** quality or **publisher** score as claimed." Appeal Br. 12–13; *see also* Reply Br. 5.

Independent claim 24 recites receiving "publisher data," where the "publisher data comprises publisher data factors," and the calculated score "comprises a reflection of success of displayed advertisements from the particular publisher." In support of this claim language, the Appellants direct us to element 301 in Figure 3, as well as all of Figures 1, 2, 5, and 6, and ¶¶ 12, 30–48 of the Specification. Appeal Br. 3–4. Figure 3 shows a list of "factors," which the Specification describes in paragraphs 30–38. The Specification describes that "factors 301 that are described above *may* be used to generate a score for a particular publisher. The score *may* be calculated with any number of the factors described above or with *other factors*." Spec. ¶ 39 (emphasis added). Because no specific factor is required, and because "other factors" may be used, we construe "publisher data factors," and thus "publisher data," to be "data."

Lipsky discloses receiving, and using for analysis, factors such as conversion rate, click rate, and average transaction value. Each of these

factors thus meets the claim language, because each is data. Lipsky col. 4, lines 24–42. Lipsky discloses scoring the performance of “placements” (*id.* col. 2, lines 48–51), which are described as “different locations on Web pages of publisher Web sites that the publisher makes available for advertising” (*id.* col. 1, lines 56–58). Therefore, because Lipsky uses data as claimed to calculate scores related to the performance of publisher placements, and assigns ratings (*id.* col. 4, lines 26–31), Lipsky discloses calculating a “publisher score” and assigning a “quality value” to a publisher as claimed.

We also are unpersuaded that Lipsky fails to calculate a publisher score and assign a quality value, as claimed, because Lipsky additionally “normalizes” publisher values to eliminate the ability to compare publishers. Appeal Br. 14; *see also* Reply Br. 5–6. Claim 1 recites a normalizing step, but claim 24 does not. The normalizing step in Lipsky thus represents a step beyond what is claimed. Claim 24 is drafted using the term “comprising,” which permits additional steps beyond those recited.

The Appellants have thus failed to demonstrate error in the Examiner’s anticipation rejection of claim 24. For this reason, we sustain the rejection of claim 24, as well as of claims 26 and 28 which were not argued separately.

*Rejection of Claims 1, 3–6, 8–11, and 14–21 under 35 U.S.C. § 103(a)*

The Appellants argue independent claims 1, 9, and 18 together as a group (Appeal Br. 15), so we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We are unpersuaded by the Appellants’ argument that Lipsky cannot be combined with Desikan, because, according to the Appellants, the

“advertisement campaign scoring in Lipsky specifically and purposely excludes the publisher and cannot be combined with publisher scoring.” Appeal Br. 15; *see also* Reply Br. 6–7.

The Examiner finds Desikan does not disclose the specific mathematical algorithm claimed, involving normalization, standard deviation, raw scores, weights, and a combined, weighted score, but that Lipsky does. Final Act. 6. The Examiner thus relies only on the disclosed mathematical techniques of Lipsky, and not the significance, or effect, of the technique applied to the data in Lipsky. We see no reason why the algorithm could not be applied to Desikan’s review of web sites, and thus see no reason why the teachings of Lipsky could not be combined with the methods in Desikan.

We also are not persuaded by the Appellants’ argument, directed only to independent claims 1 and 18, that neither Desikan nor Lipsky discloses the claimed “traffic quality variable.” Appeal Br. 15.

In support of the term “traffic quality variable” in claim 1, the Appellants direct us to Figures 1–3 and paragraph 12 of the Specification. Appeal Br. 2. In support of the term “traffic quality score” in claim 18, the Appellants direct us to Figures 1–3, 5, and 6, and paragraphs 12 and 30–48. *Id.* 3. Appellants’ Figure 3 indicates element 310 is a “Traffic Quality Score.” The Specification does not define the term, or mention the term “traffic quality variable,” but describes that traffic quality score 310 “may be a representation of the quality of the traffic that is either viewing the publisher’s page or viewing and/or clicking on the advertisements,” such as an assigned score of 1 to 5. Spec. ¶ 35. The Specification does describe that the factors may be described as “variables,” though. *Id.* ¶ 30. Although the

traffic quality score/variable may be an assigned number, and may relate to whether “clicks are valid” or “invalid clicks” (*id.*), the score could be a measure of something else, represented differently. We thus broadly construe the traffic quality variable/score to be data about quality.

Desikan discloses a “‘quality score’ is typically a quantitative indicator of the value or relative value of the participation of a Website or Webpage (or some other document or collection of documents) in an advertising network.” Desikan col. 6, lines 25–28 (cited at Final Act. 6). Desikan thus discloses both a traffic quality score and a traffic quality variable, because Desikan’s “quality score” is data about quality.

Because the Appellants have not shown error in the Examiner’s obviousness rejection of claims 1 and 18, we sustain the rejection of these claims, as well as dependent claims 3–6, 9, 10, 14–17, and 19–21, which were not argued separately.

#### Rejection of Claim 29

The Appellants argue the combination of DeBusk and Desikan fails to disclose the publisher score because DeBusk’s metrics are not the claimed publisher score. Appeal Br. 16–17. We are unpersuaded by the Appellants’ argument, because the Examiner did not rely on DeBusk, but instead articulated that “DeBusk does not explicitly disclose computing publishers score based on the analysis. Desikan teaches computing a first publishers score (Website quality score) based on the analysis (usage data e.g., impression, selection, conversions, etc.)” Final Act. 10. The Appellants fail to address the Examiner’s actual findings, and thus fail to show error in the Examiner’s rejection. For this reason, we sustain the obviousness rejection of claim 29.

Rejection of Claims 30 and 31

The Examiner rejects claims 30 and 31 over DeBusk and Desikan further in view of Granville. The Appellants assert that “[t]he addition of Granville to the combination of DeBusk and Desikan fail to cure the deficiencies discussed above with respect to independent claim 29.” App. Br. 17. For the reasons set forth above, however, we are unpersuaded such a deficiency exists.

DECISION

We AFFIRM the rejection of claims 1, 3–6, 8–11, 14–21, 24, 26, and 28–31 under 35 U.S.C. § 101.

We AFFIRM the rejection of claims 24, 26, and 28 under 35 U.S.C. § 102(e).

We AFFIRM the rejections of claims 1, 3–6, 8–11, 14–21, and 29–31 under 35 U.S.C. § 103(a).

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).

AFFIRMED