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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* RONALD BIENIAS

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Appeal 2017-007899  
Application 13/064,274  
Technology Center 3600

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Before MICHAEL J. STRAUSS, AARON W. MOORE, and  
PHILLIP A. BENNETT, *Administrative Patent Judges*.

BENNETT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 17–25. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### CLAIMED SUBJECT MATTER

The claims are directed to interactive virtual customized vehicle design, purchase, and final acquisition. Claim 17, reproduced below, is illustrative of the claimed subject matter:

17. A method for customizing a vehicle from a vehicle manufacturer having a plurality of dealers comprising the steps of:

providing a computing facility associated with said manufacturer, said facility networked with a user end terminal to allow for the exchange of text and image data there between, said computing facility also networked with a plurality of data processing resources associated with manufacturers of aftermarket components or options compatible with said vehicle, said computing facility initiating and generating a three dimensional display of said vehicle in response to a user entered inquiry;

the server initiating a search of said data processing resources associated with manufacturers of aftermarket components to find aftermarket components compatible with said vehicle in response to a user request, said server generating a list of said aftermarket components and transmitting said list to said end user;

transmitting said three dimensional display of said vehicle from said computing facility to said user, said transmitted display viewable as part of a product display screen on said user terminal, said product display screen including identifying indicia corresponding to said list of aftermarket components;

said server generating and transmitting at least a two dimensional image of one or more user selected components or options for display on said product display screen in response to a user request, said two dimensional component image including data indicating both price and availability of said selected component or option;

generating a modified three dimensional display of said vehicle configured with one or more of said selected components or options, and transmitting said modified three dimensional display from said computing facility to said user;

whereby said vehicle is configured with said one or more of said aftermarket components or options by said manufacturer in response to a completed sales transaction between the user and one of said plurality of dealers, said configured vehicle delivered to said user at a predetermined delivery date.

App. Br. 8 (Claims Appendix).

#### REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Takaoka	US 2003/0187753 A1	Oct. 2, 2003
Pyle	US 2007/0185777 A1	Aug. 9, 2007
Ellis	US 7,353,192 B2	Apr. 1, 2008

Selected pages from website <http://www.vw.com>, dated 2008 as retrieved from [web.archive.org](http://web.archive.org) (“VW”)

#### REJECTIONS

Claims 17–25 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 4–5.

Claims 17, 19, 20, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis and Takaoka. Final Act. 6–16.

Claims 21–24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis, Takaoka, and VW. Final Act. 16–18.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis, Takaoka, and Pyle. Final Act. 18–19.

## DISCUSSION

### 35 U.S.C. § 101 REJECTION

#### *Legal Standard for Patent Eligibility*

In issues involving subject matter eligibility, our inquiry focuses on whether the claims satisfy the two-step test set forth by the Supreme Court in *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). The Supreme Court instructs us to “first determine whether the claims at issue are directed to a patent-ineligible concept,” *id.* at 2355, and, in this case, the inquiry centers on whether the claims are directed to an abstract idea. If the initial threshold is met, we then move to the second step, in which we “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.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). The Supreme Court describes the second step 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.’” *Id.* (quoting *Mayo*, 566 U.S. at 72–73).

#### *Examiner’s Findings*

The Examiner rejects the claims under the two-step *Alice* framework. Under the first step, the Examiner determines the claims are “directed to the abstract idea of customizing an item for purchase which is a fundamental economic practice.” Final Act. 4. The Examiner further explains:

The claims are directed to customizing an item for purchase which is considered to be a fundamental economic practice by comparing new and stored information using rules to identify options. Comparing new and stored information using rules to

identify options has been deemed by the Federal Circuit to be an abstract idea.

Ans. 2.

Having found the claims to be directed to an abstract idea, the Examiner proceeds to the second step of the *Alice* inquiry, finding the claims do not possess a sufficient inventive concept under *Alice* step 2:

The claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because when considered separately and in combination, they do not add significantly more to the exception. Considered separately and as an ordered combination, the claim elements do not provide an improvement to another technology or technical field; do not provide an improvement to the functioning of the computer itself; do not apply the judicial exception by use of a particular machine; do not effect a transformation or reduce a particular article to a different state or thing; and do not add a specific limitation other than what is well-understood, routine and conventional in the operation of a generic computer.

Ans. 3.

#### *Appellant's Contentions*

Appellant presents several arguments in favor of eligibility. First, Appellant argues the claims are eligible because they are not “analogous to those of *Alice* or *Bilski*.” App. Br. 5. More specifically, Appellant argues the claims are distinguishable over those cases because “the claims . . . result in a modified, yet tangible, output; namely a car.” *Id.*; *see also* Reply Br. 1 (“The present invention is directed to software which performs various tasks, but is primarily concerned with producing an output, namely, a customized car.”). Second, Appellant argues the Examiner’s characterization of the abstract idea is incorrect because the “present invention is directed to modifying the manufacture of an article *using* a related product.” App.

Br. 5. Third, Appellant contends “there is no present method for providing a customized vehicle from a manufacturer using data obtained in real time from third party manufacturers (via the internet)” and that “[t]his is a key aspect of the invention . . . [that] is not something that can be done by a human.” *Id.*

*Analysis*

We do not find Appellant’s arguments persuasive. At its core, Appellant’s invention recites a process which allows a prospective vehicle purchaser to customize their vehicle using available aftermarket parts using the Internet to retrieve the available parts information. We agree with the Examiner that such a process is a fundamental economic practice. Appellant’s Specification supports this determination in various respects. For example, the Specification states “[t]he present invention relates to electronic commerce,” Spec. 1, l. 10, and that the invention allows a vehicle “to be customized and, if desired, purchased using the system of the present invention,” Spec. 9, ll. 3–4.

Although the limitations recited in the claim involve computer-based operations, all of the recited operations are merely automation of the customization and purchasing process using generic computers and software already known in the art. For example, the Specification does not describe the various computing devices used in the invention in anything other than generic terms—identifying various system components as including PC 12, servers 21, host computing facility 18, computing resources 16, etc. *See* Spec. 10, ll. 5–22. No details are provided regarding the structure of these components, and they are described only in terms of the functions they perform in the system. In addition, the software used to perform the recited

function is also described at a high level. For example, the generation of the image of a vehicle is accomplished “using CAD/CAM techniques as is known in the art.” Spec. 10, ll. 24–25; *see also* Spec. 12, ll. 9–11.

Our reviewing court instructs us that the “decisional mechanism” for determining whether a claim is directed to an abstract idea compares the claim to those claims previously found to have been directed to abstract ideas in other cases. *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“[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.”). Appellant argues the claims are dissimilar to those found to be abstract in *Alice* and *Bilski*. We disagree.

We view the claims on appeal as having a “similar or parallel descriptive nature” to the claims in *Alice* and *Bilski* because they ultimately are directed to an entrepreneurial improvement (i.e., customization of vehicles with third party aftermarket parts), and not a technological one. The Federal Circuit has repeatedly held that such entrepreneurial improvements are within the realm of abstract ideas. *See, e.g., Bilski v. Kappos*, 561 U.S. 593, 595 (2010) (“how hedging can be used in commodities and energy markets, [is an] attempt to patent the use of the abstract hedging idea”); *Alice*, 134 S. Ct. at 2355 (“the abstract idea of intermediated settlement”); *BuySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (claims that “are squarely about creating a contractual relationship—a ‘transaction performance guaranty’” held as “directed to an abstract idea”); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed. Cir. 2009) (structuring a sales force or marketing company is abstract).

We find the Federal Circuit’s decision in *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044 (Fed. Cir. 2017) (“*CAC*”) instructive. In *CAC*, the Federal Circuit addressed a claim “directed to a system for maintaining a database of information about the items in a dealer’s inventory, obtaining financial information about a customer from a user, combining these two sources of information to create a financing package for each of the inventoried items, and presenting the financing packages to the user.” *CAC*, 859 F.3d at 1054. The Federal Circuit found the claim directed to an abstract idea because it focused on an improvement to the automobile purchasing process which, although different from the process claimed in *Alice*, had “no meaningful distinction between this type of financial industry practice and the ‘the concept of intermediated settlement’ held to be abstract in *Alice*, or the ‘basic concept of hedging’ held to be abstract in *Bilski v. Kappos*.” *CAC*, 859 F.3d at 1054 (citation omitted).

As was the case in *CAC*, the claims here relate to improvements to the process of automobile purchasing by collecting information, analyzing it, and displaying certain results of the collection and analysis. As such, the claims, like those in *CAC*, are directed to a fundamental economic practice, which is an abstract idea. *CAC*, 859 F.3d at 1055–56; *see also Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (finding claims abstract because “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particularly inventive technology for performing those functions”).

Appellant’s second argument—that the claims are eligible because the claimed method produces a car—is also unpersuasive. We disagree that the

manufacture of a car is the focus of the claim. Rather, as we noted above, the Specification expressly states that “[t]he present invention relates to electronic commerce,” Spec. 1, l. 10, and the invention allows a vehicle “to be customized and, if desired, purchased using the system of the present invention,” Spec. 9, ll. 3–4. Moreover, the Specification provides no details or description relating any manufacturing or production activity. Rather, it merely describes that “[o]nce the user has completed the customization, financing, and price negotiation, if any, a final date for delivery of the vehicle 10 is established, and the user then acquires the vehicle.” Spec. 16, ll. 5–7.

Appellant’s third argument is similarly unpersuasive. Appellant argues that the claims are eligible because they are “not something that can be done by a human.” App. Br. 5. We do not find this argument persuasive because the Federal Circuit rejected a similar argument in *Electric Power Group*, finding that “[m]erely requiring the selection and manipulation of information—to provide a ‘humanly comprehensible’ amount of information useful for users by itself does not transform the otherwise-abstract processes of information collection and analysis.” *Electric Power Group*, 830 F.3d at 1355; *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“[O]ur precedent is clear that merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an other-wise abstract idea.”).

In sum, we are not persuaded the Examiner erred in concluding the claims are directed to ineligible subject matter. Accordingly, we sustain the rejection under 35 U.S.C. § 101.

35 U.S.C. § 103 REJECTION

*Issue*

Whether the Examiner erred in finding Ellis teaches or suggests the disputed limitation “said computing facility also networked with a plurality of data processing resources associated with manufacturers of aftermarket components or options compatible with said vehicle,” as recited in claim 17.

*Analysis*

In rejecting claim 17, the Examiner finds Ellis teaches or suggests the disputed limitation because it teaches user computers (the recited “computing facility”) networked with a product configuration display system 104 (the recited “plurality of data processing resources associated with manufacturers of aftermarket components or options compatible with said vehicle”). Final Act. 6. The Examiner further finds that the product configuration display system is “associated with manufacturers of aftermarket components” because it is used to display aftermarket components from those manufacturers. Final Act. 6–7 (citing Ellis col. 17, ll. 6–10).

Appellant argues that the Examiner has erred because:

Neither reference discloses or suggests using third party databases to acquire parts to customize a vehicle at the manufacturing site. Ellis and Takaoka both rely on parts data stored on the manufacturer's server to effect vehicle customization, neither reference discusses using third party databases in a manner transparent to the user.

App. Br. 6.

We are not persuaded by Appellant’s argument because it is not commensurate with the scope of the claim. Appellant’s argument seeks to distinguish the claim on the basis that no “third party databases” are used in

the prior art references. As the Examiner correctly notes, the claim does not recite the presence or use of any “third party databases.” Rather, the claim recites the use of “a plurality of data processing resources associated with manufacturers of aftermarket components or options compatible with said vehicle,” which is broader in scope. Specifically, the claim does not require that the “data processing resources associated with manufacturers of aftermarket components” be a database, nor does it require that the computing resources be owned or controlled by a third party. Rather, the language of the claim merely requires that the recited “data processing resources” be in some way “*associated with* manufacturers of aftermarket components.”

The cited portions of Ellis teach data processing resources, namely a product configuration display system 104, which displays components manufactured by aftermarket parts manufacturers. Because Ellis’s product configuration display system 104 displays the aftermarket components, it teaches data processing resources which are *associated with*, albeit not necessarily directly or closely, the manufacturers of those components. Because Appellant’s argument relies on an overly narrow interpretation of the scope of the claim, we are not persuaded of Examiner error. Accordingly, we sustain the rejection of claim 17 under 35 U.S.C. § 103(a).

#### SUMMARY

Because Appellant’s claims are directed to an abstract idea and the claims contain no additional elements that transform the nature of the claims into a patent-eligible application of the abstract idea, we affirm the rejection under 35 U.S.C. § 101. Appellant has not persuaded us the Examiner erred

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in finding Ellis teaches or suggests the disputed limitation in claim 17.  
Accordingly, we also sustain the rejection of claim 17 under 35 U.S.C § 103.

Appellant does not present separate arguments for patentability of any other claims. Accordingly, we treat claim 17 as representative, and we sustain the rejections of the remaining claims for the same reasons.

#### DECISION

We affirm the Examiner's rejection of claims 17–25.

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).

AFFIRMED