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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ARON ENGLAND, STEVEN TEDJAMULIA, and  
HENRY HAITIAN CHEN

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Appeal 2017-008434  
Application 14/043,349  
Technology Center 3600

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Before JOSEPH L. DIXON, JOHN A. JEFFERY, and  
JOHNNY A. KUMAR, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 7–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to a social marketplace digital worth score. Spec., Title. Claim 7, reproduced below, is illustrative of the claimed subject matter:

7. A system comprising:

a processor;

a data bus coupled to the processor; and

a computer-usable medium embodying computer program code, the computer-usable medium being coupled to the data bus, the computer program code interacting with a plurality of computer operations and comprising instructions executable by the processor and configured for:

processing a first set of social graph data associated with a first social media user to identify a plurality of second social media users, the first social media user associated with a first social commerce storefront, the plurality of second social media users associated with a second set of social graph data;

processing the first and second sets of social graph data to generate a first digital worth score and a plurality of second digital worth scores;

processing the first and second digital worth scores to generate an aggregate digital worth score;

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<sup>1</sup> Appellants indicate that Dell Products L.P. is the real party in interest. (App. Br. 1.)

retrieving social commerce data associated with the social commerce storefront;

processing the aggregate digital worth score and the retrieved social commerce data to generate a first social commerce valuation value;

identifying a second social commerce storefront comparable to the first social commerce storefront, the second social commerce storefront comprising a second social commerce valuation value;

performing comparison operations to compare the first social commerce valuation value to the second social commerce valuation value to generate a potential monetary value for the virtual storefront.

## REJECTIONS<sup>2</sup>

The Examiner made the following rejections:

Claims 7–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is not directed to patent eligible subject matter. (Final Act. 4–6.)<sup>3</sup>

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<sup>2</sup> We note that independent claims 7 and 13 were significantly modified in an amendment, dated April 3, 2015, which changed that the scope of the independent claims and prosecution, but neglected to modify any dependent claims for the corresponding changes to the independent claims. In any further prosecution on the merits, the Examiner should address the antecedent bases problems in all of the dependent claims regarding “the product catalog,” “the purchasable products,” “the social data,” etc. which are not found in the independent claims.

<sup>3</sup> We note that the Examiner has not modified the statement of rejection since the Non-Final Office Action, dated January 5, 2015, and the Examiner’s Final Office Action, dated June 24, 2016, addresses the original claim language. Appellants have merely provided general arguments reciting the amended claim language without substantive arguments and the

Claims 13–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. (Final Act. 6–7.)

#### ANALYSIS

With respect to independent claims 7 and 13, Appellants do not present separate arguments for patentability of the claims. (App. Br. 3.) As a result, we select independent claim 1 as the representative claim for the group and will address Appellants’ arguments thereto. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We consider all evidence presented and all arguments actually made by Appellants. We do not consider arguments which Appellants could have made but chose not to make in the Brief so that we deem any such arguments as waived. 37 C.F.R. § 41.37(c)(1)(iv).

Additionally, Appellants did not file a Reply Brief to further respond to the Examiner’s ground of rejection and findings and conclusion regarding the lack of patent eligible subject matter in the Examiner’s Answer.

Appellants generally argue the claims of the present application are similar to those addressed in the *McRO, Inc. v. Namco Bandai Games America, Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) and *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) cases. (App. Br. 4–5.)

To determine whether claims are patent eligible under § 101, we apply the Supreme Court’s two-step test articulated in *Alice Corp. Proprietary Ltd.*

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Examiner merely responds to those arguments. Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*v. CLS Bank International*, 134 S. Ct. 2347 (2014). First, we determine whether the claims are directed to a patent-ineligible concept: laws of nature, natural phenomena, and abstract ideas. *Id.* at 2354–55. If so, we then proceed to the second step and examine the claim’s elements—both individually and as an ordered combination—to determine whether the claim contains an “inventive concept” sufficient to transform the claimed abstract idea into a patent-eligible application. *Id.* at 2357.

#### *Alice Step One*

Applying *Alice* Step one, we agree with the Examiner that the claimed invention is directed to an abstract idea, namely “implementing the process.” The Examiner specifically finds:

In the instant case, claims 7 and 13 are directed to apparatuses for implementing the process. The claims are directed to providing electronic catalogs to users which is considered to be an abstract idea inasmuch as such activity is considered both a fundamental economic practice and a method of organizing human activity.

(*See* Final Act. 5.)

We note that Appellants’ Specification states “[e]mbodiments of the invention relate generally to information handling systems. More specifically, embodiments of the invention provide a method and system for managing catalog resources within a social commerce environment.” (Spec.

¶ 2.) Appellants’ Specification further states:

We provide a service to individuals, SMB and enterprises that allow them to give us access to their social networks, analytics to their sites, site content, emails and then *we extract information (e.g., keywords) and match it up against our algorithm.* Advertisements are then processed with the

algorithm to generate a potential dollar worth score for their social property to get a higher SEO [(search engine optimization; *see* Spec. ¶ 41)] score, ad clicks, and product sales. The score will allow them to see what a site is worth if the user plans to ever buy or sell it.

(Spec. ¶ 7 (emphasis added).)

In essence, the claimed invention makes data manipulations for valuations of worth based on digital worth scores and social commerce data. Given this fundamental data analysis function, we agree with the Examiner that the claimed invention is directed to an abstract idea despite Appellants' arguments to the contrary. (App. Br. 3–5.) Moreover, the dependent claims further emphasize the data manipulation of product catalog data used in independent claim 7 which does not further limit the claimed invention to “significantly more” than the abstract idea.

It is well settled that collecting information is within the realm of abstract ideas—even when the information is limited to particular content. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). It is also well settled that analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, are essentially mental processes within the abstract idea category. *Id.* at 1354. And merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. *Id.* Similar to the claims at issue in *Electric Power*, the claimed invention here retrieves, processes, and identifies data to generate a potential monetary value for the virtual storefront, but does not use any particular inventive technology for performing those functions.

Extracting data from collected data set is likewise abstract. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding ineligible claims directed to (1) collecting data; (2) recognizing certain data within the collected data set; and (3) storing the recognized data in memory). Therefore, processing social graph data and processing digital worth scores and social commerce data in the claimed invention, like the data extraction in *Content Extraction*, is an abstract idea.

We find unavailing Appellants' contention that the Examiner has oversimplified the claims and ignores specific details in the claim elements. (App. Br. 4.) Appellants further contend that:

claim 7 is a technological improvement over existing technology achieved through the particular ordered combination of elements. The inventiveness of the claims is not derived from the application of well-known concepts to a computer. Thus, clearly the claims do not merely apply an abstract idea on a computer and are not required to improve the functioning of the computer itself. Thus, as with *Bascom*, the claims herein are "more than a drafting effort designed to monopolize the [abstract idea]." *Alice*, 134 S. Ct. at 2357. Instead, the claims may be read to "improve[ ] an existing technological process." *Id.* at 2358 (discussing the claims in *Diehr*, 450 U.S. 175). *Bascom*, p. 17.

(*Id.* at 5.)

We disagree with Appellants. Moreover, the Examiner has evaluated Appellants' arguments and found the arguments are not persuasive with regards to the claimed invention. (Ans. 4–5.) Our finding is not inconsistent with the Examiner's finding of an abstract idea as recited in the language of independent claims 7 and 13.

Furthermore, with respect to a Step 2 of the *Alice* analysis, we find the recited steps to merely recite basic computer functions which do not amount to significantly more than the abstract idea.

But the claimed invention is not directed to improving the computer's operation by, for example, improving its speed and efficiency, but rather performs data manipulation to generate a monetary value. Although these functions may be beneficial to a user, a claim for a useful or beneficial abstract idea is still an abstract idea. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379–80 (Fed. Cir. 2015).

Nor are we persuaded that the claimed invention improves the computing devices' functionality or efficiency, or otherwise changes the way those devices function, at least in the sense contemplated by the Federal Circuit in *Enfish, LLC v. Microsoft Corporation*, 822 F.3d 1327 (Fed. Cir. 2016), despite Appellants' arguments to the contrary. (App. Br. 3.) The claimed self-referential table in *Enfish* was a specific type of data structure designed to improve the way a computer stores and retrieves data in memory. *Enfish*, 822 F.3d at 1339. To the extent Appellants may contend that the claimed invention uses such a data structure to improve a computer's functionality or efficiency, or otherwise change the way that device functions (*see* App. Br. 3), there is no persuasive evidence on this record to substantiate such a contention.

To be sure, the court in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1299–300 (Fed. Cir. 2016) held that a claim directed to using accounting information with which a network accounting record is correlated to *enhance* the record was held eligible because the claim involved an *unconventional* technological solution (enhancing data in a

distributed fashion) to a technological problem (massive record flows which previously required massive databases). Although the court recognized that this solution used generic components, the recited enhancing function necessarily required these generic components to operate in an *unconventional* manner to achieve an improvement in computer functionality. *Id.* at 1300–01. Notably, the recited enhancement in *Amdocs* depended on not only the network’s distributed architecture, but also on the network devices and “gatherers” working together in a distributed environment. *Id.* at 1301. In reaching its eligibility conclusion, the court noted the patent’s emphasis on the drawbacks of previous systems where all network information flowed to one location making it very difficult to keep up with massive record flows from network devices and requiring huge databases. *Id.* at 1300. The court also noted similar network-based drawbacks that were overcome by similar unconventional distributed solutions in other patents at issue. *See id.* at 1305–06.

That is not the case here. Although the claimed invention uses conventional computing components that receive and process data, there is no persuasive evidence on this record to show that these generic components operate in an *unconventional* manner to achieve an improvement in computer functionality as in *Amdocs*.

We, therefore, agree with the Examiner that claim 1 is directed to an abstract idea.

#### *Alice Step Two*

Turning to *Alice* step two, the recited elements—considered individually and as an ordered combination—do not transform the nature of

claim 1 into a patent-eligible application of the abstract idea to ensure that the claim amounts to significantly more than that idea. *See Alice*, 134 S. Ct. at 2357.

That the recited method steps in the system are executed by a processor does not change our conclusion. As the Examiner explains, the claimed invention merely uses generic computing components to perform the recited abstract idea, namely making data processing based on social graph data and social commerce data. (*See* Final Act. 5–6; Ans. 5.) Merely reciting these generic computing components cannot transform a patent-ineligible abstract idea into a patent-eligible invention. *See Alice* 134 S. Ct. at 2358–59; *see also Mortgage Grader, Inc. v. First Choice Loan Servs., Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (noting that components such as an “interface,” “network,” and “database” are generic computer components that do not satisfy the inventive concept requirement); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”).

Moreover, the recited generic computing components merely do that which can be performed mentally or with pen and paper—exclusive functions ineligible for patent protection under § 101. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011). For example, a human can process social graph data to generate digital worth scores and further process social commerce data as claimed. Based on this interpretation, we see no reason why a human could not process these data values to achieve the resultant data values, as claimed. That the claims do not specify *how* the recited data processing steps are performed apart from

its performance based processor only underscores the breadth of these limitations which, as noted above, can otherwise be performed manually. We reach a similar conclusion regarding the identifying and comparing steps could otherwise be performed manually.

To the extent that Appellants may contend that the recited functions could not otherwise be performed manually (*see generally* App. Br. 4), there is no persuasive evidence on this record to substantiate such a contention. *See CyberSource*, 654 F.3d at 1372.

Nevertheless, even assuming, without deciding, that the recited components add efficiency, any speed increase comes from the capabilities of the generic computer components—not the recited process itself. *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (citing *Bancorp Services, LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”)). Like the claims in *FairWarning*, the focus of claim 7 is not on an improvement in computer processors as tools, but on certain independently abstract ideas that use generic computing components as tools. *See FairWarning*, 839 F.3d at 1095 (citations and quotation marks omitted).

In short, merely reciting these generic computing components cannot transform a patent-ineligible abstract idea into a patent-eligible invention. *Alice*, 134 S. Ct. at 2358. In other words, merely reciting an abstract idea while adding the words “apply it with a computer” does not render an abstract idea non-abstract: there must be more. *See id.* at 2358–59. Nor does the claimed invention improve the processor’s functionality or

efficiency, or otherwise change the way that device functions. *Cf. Enfish*, 822 F.3d at 1335. Appellants’ contention, then, that the “inventive concept in, for example, claim 7 is a technological improvement over existing technology achieved through the particular ordered combination of elements” (App. Br. 5), is unavailing.

Lastly, Appellants have not set forth separate arguments for patentability/eligibility of any of the dependent claims nor have Appellants filed a Reply Brief to respond to the Examiner’s further clarifications.

For the foregoing reasons, then, the recited elements—considered both individually and as an ordered combination—do not contain an “inventive concept” sufficient to transform the claimed abstract idea into a patent-eligible application. Therefore, we are not persuaded that the Examiner erred in rejecting claims 7–20 as ineligible under § 101.

#### *Non-transitory Medium*

The Examiner maintains that the broadest reasonable interpretation of independent claim 13 and its dependent claims includes a transitory computer readable medium. (Final Act. 6–7.)

Appellants contend that independent claim 13 will be amended upon removal of the *Alice*-type statutory subject matter rejection to overcome the lack of a “non-transitory computer readable medium” statutory subject matter rejection. (App. Br. 5.)

Because Appellants have not amended claim 13, we additionally pro forma sustain the Examiner’s rejection of claims 13–20 based upon a lack of a non-transitory medium.

### CONCLUSIONS

The Examiner did not err in rejecting claims 7–20 based upon a lack of patent eligible subject matter under 35 U.S.C. § 101, and the Examiner did not err in rejecting claims 13–20 as directed to non-statutory subject matter under 35 U.S.C. § 101 based upon a lack of a “non-transitory computer readable medium”.

### DECISION

For the above reasons, we sustain the Examiner’s patent eligibility rejections of claims 7–20.

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