



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/163,421	06/27/2008	Yekesa Kosuru	114033-1097/PRAG 63331	8613
146446	7590	09/19/2019	EXAMINER	
Dinsmore & Shohl LLP 801 Pennsylvania Avenue, N.W. Suite 610 Washington, DC 20004			FU, HAO	
			ART UNIT	PAPER NUMBER
			3697	
			NOTIFICATION DATE	DELIVERY MODE
			09/19/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Evette.Ginn@DINSMORE.COM
dcipdocket@dinsmore.com
kimberly.koen@dinsmore.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YEKESA KOSURU

Appeal 2017-011602
Application 12/163,421
Technology Center 3600

Before CARL W. WHITEHEAD JR., KARA L. SZPONDOWSKI, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–15, 17–20, 22–24, 26–32, 34, and 35, which constitute all of the claims pending in the current application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellant's invention is generally directed to dynamically rearranging and deploying advertising selection logic in order to optimize the selection of advertisements to be displayed. Spec. ¶¶ 1, 3. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method of rearranging a sequence of advertisement selection filters comprising:

receiving at a mobile user communication device an advertisement selection logic sent over a communication network from an advertisement server, the advertisement selection logic including a first arrangement of a plurality of advertisement selection filters, and the mobile user communication device comprising a processor and a memory that stores computer executable instructions and data used by the processor, wherein the processor:

processes the advertisement selection logic in a pipeline model according to the first arrangement of the plurality of advertisement selection filters;

determines an advertisement click history at the mobile user communication device;

determines a second arrangement of the plurality of advertisement selection filters of the advertisement selection logic based on the click history;

processes the advertisement selection logic in the pipeline model according to the second arrangement of the plurality of advertisement selection filters; and

causes a presentation of one or more advertisements at the mobile user communication device, wherein the one or more advertisements are filtered via the second arrangement of the plurality of advertisement selection filters.

REJECTION

Claims 1–15, 17–20, 22–24, 26–32, 34, and 35 stand rejected under 35 U.S.C. § 101 as directed to ineligible subject matter.

ANALYSIS

35 U.S.C. § 101 Rejections

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.

However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“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.”); *see also 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.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611);

mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (January 7, 2019) (“Memorandum”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(1) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(2) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Memorandum, 84 Fed. Reg. at 52–57.

USPTO Memorandum, Step 2A, Prong 1

The Examiner determines the claims are directed to rearranging a sequence of advertisement selection filters based on click history, which is advertising activity based on a human behavior pattern, and therefore, an abstract idea. Final Act. 2–4; Ans. 3–4; *see also* Final Act. 7 (“[T]he claims are directed towards targeted advertising . . . [which] is a fundamental economic practice and it is an activity based on human behavior pattern.”).

Appellant argues the claims “include features which are both new and useful” such that they are not “fundamental” or “long prevalent,” so the claims are not drawn to an abstract idea. App. Br. 13, 16. Appellant further argues the Examiner has oversimplified the claim. *Id.* at 19; Reply Br. 5. In addition, Appellant argues the “claims are not directed to ***using advertising as an exchange or currency.***” Reply Br. 3.

Appellant’s arguments are not persuasive. Claim 1 recites the following limitations: (1) “[a] method of rearranging a sequence of advertisement selection filters,” (2) “receiving . . . advertisement selection logic . . . including a first arrangement of a plurality of advertisement selection filters,” (3) “processes the advertisement selection logic . . . according to the first arrangement of the plurality of advertisement selection

filters,” (4) “determines an advertisement click history,” (5) “determines a second arrangement of the plurality of advertisement selection filters of the advertisement selection logic based on the click history,” (6) “processes the advertisement selection logic . . . according to the second arrangement of the plurality of advertisement selection filters,” and (7) “causes a presentation of one or more advertisements . . . wherein the one or more advertisements are filtered via the second arrangement of the plurality of advertisement selection filters.” Independent claims 17, 20, 32, 34, and 35, recite similar limitations. These limitations recite advertising activity, in particular, selecting and presenting advertisements based on a user’s interests, which is identified as certain methods of organizing human activity and, therefore, an abstract idea. *See* Memorandum, 84 Fed. Reg. at 52; *see* Final Act. 2–4, 7; Ans. 3–4; *see Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016) (“[W]e hold that the concept of delivering user-selected media content to portable devices is an abstract idea.”); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015) (the practice of tailoring advertising to individual customers is a “fundamental . . . practice long prevalent in our system”).

Accordingly, Appellant has not sufficiently argued why the claims do not recite an abstract idea. Therefore, we conclude the claims recite an abstract idea pursuant to Step 2A, Prong One of the guidance. *See* Memorandum, Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception).

USPTO Memorandum, Step 2A, Prong 2

In determining whether the claims are “directed to” the identified abstract idea, we next consider whether the claims recite additional elements

that integrate the judicial exception into a practical application.¹ We discern no additional element (or combination of elements) recited in the claims that integrates the judicial exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54–55.

The Examiner determines the claims “do not include an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.” Final Act. 7; *see also id.* at 2–10. In addition, the Examiner determines “the limitations . . . are [performed] by [a] generically recited computer device.” *Id.* at 7.

Appellant argues a claim that recites a generic computer implementation is not necessarily patent ineligible. App. Br. 15–17. Appellant further provides quotations and citations from *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016) and the May 19, 2016 USPTO Guidance, and argues these support Appellant’s contentions regarding patent eligibility. App. Br. 17.

We agree with the Examiner’s findings and conclusions. *See* Final Act. 7–10; Ans. 4–11. Although Appellant cites to *Enfish* and the May 2016 USPTO Guidance, Appellant does not provide any argument or explanation

¹ We acknowledge that some of the considerations at Step 2A, Prong Two, properly may be evaluated under Step 2 of *Alice* (Step 2B of the Office guidance). For purposes of maintaining consistent treatment within the Office, we evaluate them under Step 1 of *Alice* (Step 2A of the Office guidance). *See* Memorandum, 84 Fed. Reg. at 55 n.25, 27–32.

as to how the claims at issue here are similar to those in *Enfish* or how they provide an improvement to the functioning of a computer, like the claims in *Enfish*. We agree with the Examiner that the claims here are not like those in *Enfish* and do not provide an improvement to the functioning of a computer. *See* Ans. 5–6; Final Act. 10.

We also agree with the Examiner that the limitations are performed by generic computer components. *See* Final Act. 7. Appellant’s claim 1 recites various computer components, such as a “mobile user communication device,” “communication network from a advertisement server,” “a processor and a memory that stores computer executable instructions and data used by the processor,” and a “pipeline model.” *See* App. Br. 21 (Claims App’x). These computer components are generically described in the Specification. *E.g.*, Spec. ¶¶ 3, 24, 28, 29, 34, Figs. 1, 2, 3. Independent claims 17, 20, 32, 34, and 35, likewise, recite similar generic computer components. *See* App. Br. 24, 25, 28–31.

Accordingly, we determine the claims do not integrate the judicial exception into a practical application. *See* Memorandum, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application). We, therefore, agree with the Examiner that the claims are *directed to* a judicial exception. *See* Final Act. 2–4; Ans. 3–4.

USPTO Memorandum, Step 2B

Turning to step 2 of the *Alice/Mayo* framework, we look to whether the claims: (a) add a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, or (b) simply append well-understood, routine, conventional activities previously

known to the industry, specified at a high level of generality, to the judicial exception. Memorandum, 84 Fed. Reg. at 56.

The Examiner determines the claims do not recite additional elements that amount to significantly more than the abstract idea. Final Act. 11–12 Specifically, the Examiner determines the processor and memory computer components perform basic functions of processing advertisement selection logic, determining click history, and rearranging advertisement selection logic. *Id.* at 11.

Appellant cites to, quotes from, and describes *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016), and argues it supports Appellant’s contentions on patent eligibility. App. Br. 18–19; Reply Br. 4–5.

Appellant has not presented persuasive arguments. Although Appellant cites to *Bascom*, Appellant does not provide any argument or explanation as to how the claims at issue here are similar to those in *Bascom* or why the claims require a “non-conventional and non-generic arrangement of computer components,” like the claims in *Bascom*. Ans. 6–7. We agree with the Examiner’s findings and conclusions that the claims here are not like those in *Bascom*. See Ans. 6–7; Final Act. 12–13. The additional elements in the claim (e.g., “mobile user communication device,” “communication network from a advertisement server,” “a processor and a memory that stores computer executable instructions and data used by the processor,” and a “pipeline model”), amount to no more than mere instructions to apply the exception using generic computer components, which is insufficient to provide an inventive concept. In particular, we agree with the Examiner that the additional limitations simply append well-

understood, routine, and conventional activities, specified at a high level of generality, to the abstract idea. *See* Final Act. 11–12. Moreover, Appellant does not direct our attention to anything in the Specification that indicates the claimed computer components perform anything other than well-understood, routine, and conventional processing functions, such as receiving, processing, and displaying data. *See Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that considering claims reciting data retrieval, analysis, modification, generation, display, and transmission as an “ordered combination” reveals that they “amount to ‘nothing significantly more’ than an instruction to apply [an] abstract idea” using generic computer technology) (internal citation omitted); *Fair Warning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (noting that using generic computing components like a microprocessor or user interface do not transform an otherwise abstract idea into eligible subject matter); *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”); *Alice*, 573 U.S. at 224–26 (receiving, storing, sending information over networks insufficient to add an inventive concept). In short, the claims do no more than require a generic computer to perform generic computer functions.

Accordingly, we conclude claims 1–15, 17–20, 22–24, 26–32, 34, and 35 are directed to certain methods of organizing human activity and thus an abstract idea wherein the claims do not recite limitations that amount to significantly more than the abstract idea itself.

Appeal 2017-011602
Application 12/163,421

DECISION

We affirm the Examiner's 35 U.S.C. § 101 rejection of claims 1–15, 17–20, 22–24, 26–32, 34, and 35.

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