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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 14/183,279, inventor William Howe, and attorney Symbus Law Group, LLC.

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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* WILLIAM HOWE and  
GEORGE ARIS MICHALOPOULOS

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Appeal 2018-001925  
Application 14/183,279<sup>1</sup>  
Technology Center 3600

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Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and  
NINA L. MEDLOCK, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's non-final rejection of claims 1–22. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We affirm.

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<sup>1</sup> Appellants identify Eunum, LLC as the real party in interest. Appeal Br. 3.

## THE INVENTION

Appellants state that the disclosure “relates generally to systems and methods related to advertising.” Spec. ¶ 1.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer-implemented method of interactive advertising, comprising:

receiving advertisements at an advertising server from advertisers via a computer network, the advertisements including offers to be extended to consumers;

transmitting the advertisements to one or more client devices via the computer network, the advertisements being configured to be presented to the consumers;

receiving at the advertising server one or more votes associated with one or more of the advertisements from the consumers during a voting period, and storing the votes and associated information in a memory;

triggering, via the advertising server, an end of the voting period;

determining numbers of votes received for the advertisements during the voting period by accessing the stored votes and associated information;

determining a winning advertisement via the advertising server utilizing selection criteria based on interaction between the consumers and the advertisements via the client devices; and

extending the offer included with the winning advertisement to a selected subset of the consumers via the computer network.

## THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Foroutan	US 7,162,433 B1	Jan. 9, 2007
Albert et al. (hereinafter “Albert”)	US 2010/0161398 A1	June 24, 2010
Anstandig et al. (hereinafter “Anstandig”)	US 2012/0302156 A1	Nov. 29, 2012

The following rejections are before us for review.

Claims 1–22 are rejected under 35 U.S.C. § 101 directed to non-statutory subject matter.

Claims 1–6, 8–13, and 15–22 are rejected under 35 U.S.C. § 103(a) over Albert, Anstandig, and Foroutan.

Claims 7 and 14 are rejected under 35 U.S.C. § 103(a) over Albert, Anstandig, and Foroutan.

Claims 1 and 14 are rejected under 35 U.S.C. § 112(b) as being indefinite.

#### FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 2–6 of the Examiner’s Answer and on pages 2–8 of the Non–Final Action, concerning only the 35 U.S.C. § 101 rejection.

#### ANALYSIS

##### 35 U.S.C. § 112(b) REJECTION

Appellants’ only argument to this rejection is that the “terms have ordinary dictionary definitions.” (Appeal Br. 8). We find this argument not persuasive because we do not consider it to be substantive. Accordingly, we affirm the rejection under 35 U.S.C. § 112(b).

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 1–22 under 35 U.S.C. § 101.

The Appellants argue claims 1–22 as a group (Appeal Br. 6), we select claim 1 as the representative claim for this group, and so the remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

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 id.* 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, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., Diehr*, 450 U.S. at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

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. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the 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* Manual of Patent Examining Procedure (“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:

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

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

*See* Guidance.

The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*,

822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

The Specification at the Summary states, “Embodiments disclosed herein provide systems and methods for advertising in which viewers or consumers of advertisements (referred to hereinafter as ‘consumers’) vote on advertisements in order to receive some benefit, such as an offer, discount, prize, etc. (hereinafter referred to as an ‘offer’), from the advertisers.” Spec. ¶ 5. The preamble of claim 1 states it is a “computer-implemented method of interactive advertising.” Understood in light of the Specification, claim 1, recites, in pertinent part,

- a) receiving advertisements . . . from advertisers, . . ., the advertisements including offers to be extended to consumers;
- b) transmitting the advertisements . . ., the advertisements being configured to be presented to the consumers;
- c) receiving . . . one or more votes associated with one or more of the advertisements from the consumers during a voting period, and storing the votes and associated information . . .;
- d) triggering . . ., an end of the voting period;
- e) determining numbers of votes received for the

advertisements during the voting period by accessing the stored votes and associated information;  
f) determining a winning advertisement . . . utilizing selection criteria based on interaction between the consumers and the advertisements via the client devices; and  
g) extending the offer included with the winning advertisement to a selected subset of the consumers . . . .

Accordingly, the Examiner found that the claims are directed to “gathering information/votes in particular from consumers to determine a winning advertisement and winning voter, which is determined as organizing human activity.” (Non-Final Act. 5).

We agree with the Examiner that claim 1 is at least directed to a method of organizing human activity because gathering votes to determine a winning advertisement is a type of managing interactions between people in that it requires a person to declare a preference and hence effect an outcome which affects an audience through such interaction. “Managing personal behavior or relationships or interactions between people” is a certain method of organizing human activity. Guidance, 84 Fed. Reg. at 52. The patent-ineligible end of the spectrum includes methods of organizing human activity. *Alice*, 573 U.S. at 220.

Turning to the second prong of the “directed to” test, claim 1 only generically requires “an advertising server,” “computer network,” and “client devices.” These components are described in the Specification at a high level of generality. *See* Spec. ¶¶ 32–41, Figs. 1, 4. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting

effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53.

Thus, we find that the claims recite the judicial exception of a method of organizing human activity that is not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to determining numbers of votes received for the advertisements during the voting period, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas/judicial exceptions, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

The additional element(s) or combination of elements in the claim(s) other than the abstract idea(s) per se amount(s) to no more than significantly more than the abstract idea itself. The claim recites the additional elements of a ‘server,’ ‘computer network,’ ‘memory,’ ‘computing device(s),’ and ‘module(s),’ utilized to carry out the claimed limitations. The additional elements ‘server,’ ‘computer network,’ ‘memory,’ ‘computing device(s),’ and ‘module(s),’ are only recited at a high level of generality and only perform generic functions of sending and receiving information and storing information to

tie advertisements to a winning advertisement based on amount of votes received from consumers and rewarding consumers using generic computers or devices and communications means. Generic computers performing generic computer functions, without an inventive concept, do not amount to significantly more than the abstract idea. The ‘server,’ ‘computer network,’ ‘memory,’ ‘computing device(s),’ and ‘module(s),’ are simply generic, which are recited to attempt to limit the abstract idea to a particular technological environment. The type of information being manipulated and obtained does not impose meaningful limitations or render the idea less abstract. Looking at the elements as a combination does not add anything more than the elements analyzed individually. Therefore, the claims do not amount to significantly more than the abstract idea itself; thus rendering the claim not patent eligible.

(Answer 4–5). We agree with the Examiner. “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to receive, transmit, trigger, determine and apply decision criteria to data to generate a result are some of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). In short,

each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants' claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (receiving, transmitting, triggering, determining and applying decision criteria to data to generate a result) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract ideas of a fundamental economic practice and a commercial or legal interaction using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

We have reviewed all the arguments Appellants have submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (Appeal Br. 6–7). We find that our analysis above substantially covers the substance of all the arguments, which have been

made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellants argue:

determining winning advertisements using various algorithms and technical means, and distributing offers associated with the winning advertisements to subsets of users. These are not abstract ideas, they are various technical methods of determining advertisements to be distributed in a network. The claims in Ultramercial v. Hulu were directed to the idea of using ad-viewing as currency- agreeing to view ads in exchange for a desired product or service. The only similarity between the two sets of claims is that both pertain in some way to advertisements. The claims in Ultramercial were not directed to technical methods of selecting appropriate advertisements for distribution as in the present application.

App. Br. 6–7.

We disagree with Appellants first because, as found above, claim 1 is directed to the abstract idea of “gathering votes to determine a winning advertisement” based on, for example, claim limitations such as, “determining numbers of votes received for the advertisements during the voting period by accessing the stored votes and associated information; determining a winning advertisement . . . utilizing selection criteria based on interaction between the consumers and the advertisements.” Claim 1. As to the recitation of the generically recited “an advertising server,” “computer network,” and “client devices,” we also found that these generic recitations of the most basic computer components and/or of a system fail to integrate the judicial exception so as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53. These components are described in the Specification at a high level of generality.

See Spec. ¶¶ 32–41, Figs. 1, 4. Appellants offer insufficient evidence as to why reference to these “technical means” are meaningful beyond the face of the language itself other than being the way that data are carried within the network. There is no further discussion in the Specification of the particular technology for performing this claimed step. See *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1263 (Fed. Cir. 2016); see also *Enfish*, 822 F.3d at 1336 (focusing on whether the claim is “an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.”) In sum, the nature of the technology recited in claim 1 is so general as to not impose a meaningful limit on the judicial exception. See Guidance, 84 Fed. Reg. at 53.

The *Ultramercial*<sup>2</sup> claims, like those before us here, were directed to an abstraction, “a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014) (quoting *Ultramercial*, 772 F.3d at 715–16). Those claims were similarly patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.*

For the reasons identified above, we determine there are no deficiencies in the Examiner’s prima facie case of patent ineligibility of the rejected claims. Therefore, we will sustain the Examiner’s § 101 rejection of claims 1–22.

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<sup>2</sup> *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014)).

35 U.S.C. § 103(a) REJECTION

The Appellants argued claims 1–6, 8–13, and 15–22 as a group. (Appeal Br. 8, 10), arguing claim 1 as the representative claim for this group, and the remaining independent claims standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

Appellants argue, “Albert rewards users for viewing or viewing and voting on an advertisement, regardless of the results of any such voting.” (Appeal Br. 9). Concerning Foroutan, Appellants further argue that it only discloses “a web page on which users guess which content will win various contests, and receive credit if they guess right. This credit is not ‘included in the winning advertisement’ rather it is apparently completely independent of any particular content and rather is rewarded for correctly guessing a contest-winner.” *Id.*

We disagree with Appellants. Albert at paragraph 63 states the following:

if user information 302 indicates based on a history of user vote 314 that a user has ranked car advertisements higher than motorcycle advertisements, then content delivery system 106 applying user selection criteria 216 may increase the likelihood of a car advertisement being selected for download and display to the particular user.

Thus, the effect of voting/ranking in Albert may “increase the likelihood of a car advertisement.” The term “likelihood” implies possibility, and thus the reward is not absolute as Appellants argue. Moreover, Albert explicitly discloses using votes by a user to rank advertisements presented to him/her, stating, “[u]ser vote 314 comprises information related to a user vote and/or

ranking of a particular advertisement viewed by the user.” Albert ¶ 40. To the extent Appellants argue that the votes tallied are not taken from a pool of users, the Examiner relies on Foroutan to meet this limitation. *See* Answer 8, 9. Our review of Foroutan reveals no error with the Examiner’s finding in that fans (plural) choose: “MY PICKS page 930 where fan users choose individual content which they believe will eventually win the elimination contest 210.” Foroutan, col. 25, ll. 64–67; *see also* Appeal Br. 8. The Examiner’s reasoning to combine Albert and Foroutan is based on the “motivation of enticing consumers to vote for advertisements and providing an efficient way of determining a winning advertisement.” Answer 9. Because the Examiner has provided some articulated reasoning with some rational underpinning for why a person with ordinary skill in the art would modify Albert with Foroutan’s plural person voting platform, we find no error with the Examiner findings.

Appellants argument to dependent claims 7 and 14 rests on those set forth for claim 1 (Appeal Br. 10–11). Therefore, the rejection of these claims is not sustained for the same reasons set forth above for the rejection of independent claim 1.

#### CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–22 under 35 U.S.C. § 101.

We conclude the Examiner did not err in rejecting claims 1–22 under 35 U.S.C. § 103.

Appeal 2018-001925  
Application 14/183,279

DECISION

The rejections of claims 1–22 are affirmed.

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