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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL KNOWLES, BHAVUK KAUL,
and SHERRYL LEE LORRAINE SCOTT

Appeal 2018-002450[1]
Application 12/776,733[2]
Technology Center 3600

Before JOSEPH A. FISCHETTI, NINA L. MEDLOCK, and CYNTHIA L. MURPHY, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 2, 6–16, and 18–24. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Our decision references Appellants' Supplemental Appeal Brief ("App. Br.," filed May 17, 2017) and Reply Brief ("Reply Br.," filed January 2, 2018), and the Examiner's Answer ("Ans.," mailed November 15, 2017), and Final Office Action ("Final Act.," mailed December 20, 2016).

[2] Appellants identify BlackBerry Limited, of Waterloo, Ontario, Canada as the real party in interest. App. Br. 2.

CLAIMED INVENTION

Appellants state that the present disclosure "relates to a system and method for distributing messages and/or content to an electronic device, such as a mobile electronic communication device" (Spec. § 1).

Claims 1 and 16 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

> 1. A method for distributing messages to an electronic device, said method comprising:
>
> [(a)] receiving, by an information processing system, location data, date data, and movement data from and corresponding to said device, wherein said device is external to said information processing system;
>
> [(b)] determining, by said information processing system, a correlation of data relating to a user of said device based on said location data, date data, and movement data;
>
> [(c)] determining, by said information processing system, a user activity state from among a plurality of activity states based on said correlation of data, said user activity state indicating a specific activity currently being performed by said user;
>
> [(d)] selecting, by said information processing system, a set of advertisements from a plurality of advertisements based on said user activity state, wherein different sets of advertisements in said plurality of advertisements are associated with a different user activity as indicated by different user activity states;
>
> [(e)] formatting, by said information processing system, one or more presentation parameters of at least one advertisement in said set of advertisements based on said user activity and an environmental context of said user activity, wherein said one or more presentation parameters are formatted differently for different user activities and different environmental contexts; and

> [(f)] wirelessly transmitting, by said information processing system and after said formatting, said at least one advertisement to said device, wherein said at least one advertisement is configured to be presented on said device according to said parameters formatted by said information processing system.

REJECTIONS

Claims 1, 2, 6–16, and 18–24 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 2, 6–16, and 18–24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Ramer et al. (US 8,195,133 B2, iss. June 5, 2012) ("Ramer"), Barbera (US 8,280,438 B2, iss. Oct. 2, 2012), Smith (US 2010/0251283 A1, pub. Sept. 30, 2010), Lewis et al. (US 2009/0199107 A1, pub. Aug. 6, 2009) ("Lewis"), and Zilka (US 8,255,154 B2, iss. Aug. 28, 2012).

ANALYSIS

Patent-Ineligible Subject Matter

Appellants argue independent claims 1 and 16 together (App. Br. 5–20). We select claim 1 as representative. Claim 16 stands or falls with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 101, 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 an implicit exception: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp.*, 573 U.S. at 217. The first step in that analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered "individually and 'as an ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). This is "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.* at 217–18 (alteration in original).

In rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that the claims recite "a method of generating first data and second data using mathematical techniques and combining the first and second data into an activity state upon which an advertisement is selected [as] associated with said activity state"; that the claimed method "simply describes the concept of gathering and checking data against criteria"; and that this concept is similar to other concepts that the courts have held abstract (Final Act. 2–3). The Examiner also determined that the claims do not include additional elements that are sufficient to amount to significantly more than the abstract idea itself (*id.* at 3; *see also* Ans. 9–10).

Addressing the claims in the Examiner's Answer, the Examiner expands on the concept to which the claims are directed, explaining, with reference to Appellants' Specification, that:

> [c]laim 1 is directed to distributing messages to electronic devices using elements of: (B) receiving data associated with movement of [the] electronic device; (C) correlating [the] received data with data associated with [the] user of [the] device, [the] date, and data from step B (0047); (D) associating data from steps B and C with defined categories called activity states, associated with [an] activity currently being performed by said user (Table A, Page[s] 18–19); (E) selecting advertisement[s] . . . associated with [the] user['s] current activity state from step D; [and] (F) formatting presentation of [the] selected advertisements matching rules associated with activity states.

Ans. 4–5. The Examiner notes that "system Claim 16 is similar . . . and adds an element (F) determining a transport mechanism associated with [the] format of [the] advertisement and configuration of [the] electronic device" (*id.* at 5). And the Examiner concludes that the claims are directed to "marketing and advertising, collecting data, processing data, selecting advertisements based on processed data and transmitting and presenting advertisements to users meeting criteria and conditions as defined," i.e., to an abstract idea similar to other concepts that the courts have held abstract (*id.* at 5–9).

After Appellants' briefs were filed, and the Examiner's Answer mailed, the U.S. Patent and Trademark Office (the "USPTO") published revised guidance for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the "2019

Revised Guidance").[3] The 2019 Revised Guidance revised the USPTO's examination procedure with respect to the first step of the *Mayo*/*Alice* framework by (1) providing groupings of subject matter that is considered an abstract idea; and (2) clarifying that a claim is not "directed to" a judicial exception if the judicial exception is integrated into a practical application of that exception. *Id.* at 50.

Appellants argue here that, rather than engaging in a full analysis under § 101, the Examiner should have been determined the patent eligibility of the pending claims according to the streamlined eligibility analysis process set forth in the USPTO's "2014 Interim Guidance on Patent Subject Matter Eligibility," 79 Fed. Reg. 74618 (Dec. 16, 2014) (App. Br. 8–11). Yet, although the streamlined analysis remains available, it only is appropriate "when the patent eligibility of a claim is self-evident." 2019 Revised Guidance, 84 Fed. Reg. at 54 (explaining that "[e]xaminers may continue to use a streamlined analysis . . . when the patent eligibility of a claim is self-evident").

We are not persuaded that the patent eligibility of the pending claims is self-evident. And, as such, we find no error in the Examiner's decision to conduct a full eligibility analysis. We also note for the record that "[t]he results of the streamlined analysis *will always be the same as the full analysis*, thus the streamlined analysis is not a means of avoiding a finding of ineligibility that would occur if a claim were to undergo the full eligibility

[3] The 2019 Revised Guidance, by its terms, applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. 84 Fed. Reg. at 50. *See also* 2019 Revised Guidance, 84 Fed. Reg. at 51 ("Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017 of the MPEP (published Jan. 2018) should not be relied upon.").

analysis." MANUAL OF PATENT EXAMINING PROCEDURE ("MPEP") § 2106.06 (emphasis added).

Appellants further argue that the claims are patent-eligible because the claims do not pose a risk of preemption (App. Br. 8–9). But, that argument is likewise unpersuasive of Examiner error. Although the Supreme Court has described "the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption," *Alice Corp.*, 573 U.S. at 216, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. "The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability" and "[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 134 S. Ct. at 2354). "[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility." *Id.*

Step One of the Mayo/Alice Framework (*2019 Revised Guidance*, *Step 2A*)

The first step in the *Mayo*/*Alice* framework, as mentioned above, is to "determine whether the claims at issue are "directed to" a patent-ineligible concept, e.g., an abstract idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the 2019 Revised Guidance (i.e., Step 2A), is a two-prong test; in Step 2A, Prong One, we look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (3) mental processes. 2019 Revised Guidance,

84 Fed. Reg. at 54. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, "that integrate the [judicial] exception into a practical application," i.e., that apply, rely on, or use 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 ("Step 2A, Prong Two"). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application do we conclude that the claim is "directed to" the judicial exception.

We are not persuaded here by Appellants' arguments that the Examiner erred in determining that the claims are directed to an abstract idea (App. Br. 11–17). The Federal Circuit has explained that "the 'directed to' inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, 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. Here, it is clear from the Specification, including the claim language, that the claims focus on an abstract idea, and not on any improvement to technology and/or a technical field.

The Specification is entitled "SYSTEM AND METHOD FOR DISTRIBUTING MESSAGES TO AN ELECTRONIC DEVICE BASED ON CORRELATION OF DATA RELATING TO A USER OF THE DEVICE," and states that the disclosure "relates to a system and method for

distributing messages to an electronic device" (Spec. ¶ 1). The Specification discloses in the Background section that advertisements and other messages are currently transmitted to mobile communication devices (*id.* ¶ 2). The number of these advertisements, however, can be overwhelming to device users; the advertisements also are provided without considering the recipient to whom the advertisements are directed, e.g., the recipient's state of mind, the activity in which the recipient is currently engaged, etc. (*id.*).

The claimed invention is ostensibly intended to address these issues by analyzing data relating to a mobile device to determine a correlation of data relating to the device user; selecting media, e.g., an advertisement from a set of advertisements, based on the correlation of data; and transmitting the advertisement to the user device (*id.* ¶ 14). More particularly, the Specification describes that the correlation of data may be determined by analyzing movement data (e.g., to determine whether the device is in a vehicle and, if so, the speed of the vehicle) and at least one status indicator relating to the device (e.g., whether the device user is the vehicle driver or a passenger) (*id.* ¶¶ 14–18). Once a correlation of data is determined, an advertisement is selected based on the correlated data; for example, if the user is the vehicle driver and the vehicle speed exceeds a predetermined threshold, the advertisement may include an audio component; on the other hand, if the speed does not exceed the threshold, the advertisement may provide audio and visual components (*id.*). Different advertisements also may be sent to the device depending on what the user is doing; for example, if the user of the device is walking, an advertisement relating to walking shoes may be provided (*id.* ¶ 45).

Consistent with this disclosure, claim 1 recites a method for distributing messages to an electronic device by (1) collecting information (including location data, date data, and movement data) from, and corresponding to, the electronic device, i.e., "receiving, by an information processing system, location data, date data, and movement data from and corresponding to said device, wherein said device is external to said information processing system" (step (a)); (2) analyzing the information, including determining a correlation of data based on the received information and a user activity state based on the correlated data, i.e., "determining . . . a correlation of data relating to a user of said device based on said location data, date data, and movement data" and "determining. . . a user activity state [indicating a specific activity currently being performed by said user] from among a plurality of activity states based on said correlation of data" (steps (b) and (c)); (3) selecting an advertisement and formatting the advertisement based the results of the collection and analysis, including the user activity and an environmental context of the user activity, i.e., "selecting . . . a set of advertisements . . . based on said user activity state" and "formatting. . . one or more presentation parameters of at least one advertisement in said set of advertisements based on said user activity and an environmental context of said user activity" (steps (d) and (e)); and (5) transmitting the selected advertisement to the electronic device, i.e., "wirelessly transmitting . . . after said formatting, said at least one advertisement to said device" (step (f)). These limitations, when given their broadest reasonable interpretation, recite collecting data, processing data, selecting advertisements based on the processed data, and transmitting the advertisements for display on a user device — i.e., targeted advertising,

which a method of organizing human activity, and, therefore, an abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

The Federal Circuit has held similar concepts to be abstract. Thus, for example, the Federal Circuit has held that abstract ideas include the concepts of collecting data, analyzing the data, and displaying the results of the collection and analysis, including when limited to particular content. *See, e.g.*, *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) ("As many cases make clear, even if a process of collecting and analyzing information is 'limited to particular content' or a particular 'source,' that limitation does not make the collection and analysis other than abstract." (quoting *Elec. Power Grp*., 830 F.3d at 1353, 1355 (citing cases)). Targeting customers with particular targeted marketing material also is a longstanding marketing and advertising practice, and is substantially similar to economic practices that the courts have found patent-ineligible. *See, e.g.*, *Morsa v. Facebook, Inc.*, 77 F. Supp. 3d 1007, 1013 (C.D. Cal. 2014), *aff'd*, 622 F. App'x 915 (Fed. Cir. 2015) (concluding that targeting advertisements to certain consumers is no more than an abstract idea); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 713 (Fed. Cir. 2014) (offering media content in exchange for viewing an advertisement); *Intellectual Ventures I LLC v.*

Capital One Bank (USA), 792 F.3d 1363, 1370 (Fed. Cir. 2015) (tailoring information presented to a user based on particular information); *Affinity Labs of Texas, LLC v. Amazon.com, Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (customizing a user interface to have targeted advertising based on user information).

Having concluded that claim 1 recites a judicial exception, i.e., an abstract idea (Step 2A, Prong 1), we next consider whether the claim recites "additional elements that integrate the judicial exception into a practical application" (Step 2A, Prong 2).

Here, the only additional elements recited in claim 1, beyond the abstract idea, are the claimed "electronic device" and the "information processing system" that performs the method steps — elements that are described in the Specification at a high level of generality, i.e., as generic computer components (*see, e.g.*, Spec. ¶¶ 50–57, 62–67).

We find no indication in the Specification, nor do Appellants direct us to any indication, that the operations recited in claim 1 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) ("[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.").

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney

argument, that attributes an improvement in technology and/or a technical field to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a "practical application," as that phrase is used in the 2019 Revised Guidance.[4]

Appellants argue that, similar to the claims in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) and *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), claim 1 is not directed to an abstract idea but rather to a "technological improvement over directed content distribution techniques" (App. Br. 14). But, we can find no parallel between claim 1 and the claims at issue in either *Amdocs* or *McRO*.

In *Amdocs*, the Federal Circuit held the claim was patent eligible because the claim entails an unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases). Although the solution requires generic components, the court determined that "the claim's enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality" and that the "enhancing limitation depends not only upon the invention's distributed architecture, but also depends upon the network devices and gatherers — even though these may

[4] The 2019 Revised Guidance references MPEP § 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. *Id.* at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not "directed to" the judicial exception.

be generic — working together in a distributed manner." *Amdocs*, 841 F.3d at 1300–01.

Appellants maintain that claim 1 solves a technology-based problem (i.e., excessive network traffic and non-targeted content sent to users in transport mechanisms (e.g., cars, bikes, etc.) that poses a safety risk by distracting a user when operating the transport mechanism), and that the claim provides a technological solution (i.e., the reduction of overall network traffic when distributing electronic content such as advertisements and the improvement of user safety of the users receiving electronic content by reducing user distraction when being presented the content) (App. Br. 16; *see also id.* at 17–20). But, Appellants do not identify any "distributed architecture" comparable to that in *Amdocs* or otherwise establish that the generic components recited in the claim operate in an unconventional manner.

We also are not persuaded that selecting appropriate electronic content, e.g., advertisements, for distribution to a particular user is a technological problem, as opposed to a business problem, or that distributing electronic content based on the activity currently being performed by the user is a technological, rather than a business, solution. Although Appellants contend otherwise, it clearly appears from the Specification that selecting an advertisement for distribution based on the activity state of the user is not primarily intended to improve the safety of the user receiving the content (although it may arguably have that effect to the extent a vehicle driver is not distracted from the task at hand, i.e., safe driving, by receipt of an advertisement) but rather to increase the probability that the

advertisement will be favorably received, i.e., that it will be relevant to the user and, therefore, more likely to lead to a purchase transaction.

Appellants further argue that "[t]he process of claim 1 and the system of claim 16 use a combined order of specific operations (analogous to *McRO*'s rules) that renders information into a specific format that is then used and applied to create desired results" (*id.* at 17). But, we are not persuaded that the present claims include "rules" that enable the claimed "information processing system" to select and render an advertisement for presentation on a user device in the same way the specific rules enabled the computer in *McRO* to generate the computer animated characters. We also find no evidence of record here that the present situation is like the one in *McRO* where computers were unable to make certain subjective determinations, i.e., regarding morph weight and phoneme timings, which could only be made prior to the claimed invention by human animators.

The '576 patent, at issue in *McRO*,[5] describes that prior to the claimed invention, character animation and lip synchronization were accomplished by human animators, with the assistance of a computer, and involved the use of a so-called "keyframe" approach in which animators set appropriate parameters, i.e., morph weights, at certain important times, i.e., "keyframes," in order to produce accurate and realistic lip synchronization and facial expressions. *McRO*, 837 F.3d. at 1305. Animators knew what phoneme a character pronounced at a given time from a time-aligned phonetic transcription (a "timed transcript"). *Id.* In accordance with the prior technique, animators, using a computer, thus, manually determined the

[5] U.S. Patent No. 6,307,576.

appropriate morph weight sets for each keyframe based on the phoneme timings in the timed transcript. *Id*.

In *McRO*, the improvement in computer animation was realized by using "rules, rather than artists [i.e., human animators], to set the morph weights and transitions between phonemes" (*id.* at 1313), i.e., in *McRO*, the invention used "rules to automatically set a keyframe at the correct point to depict more realistic speech, achieving results similar to those previously achieved manually by animators." *Id.* at 1307. The rules in *McRO*, thus, allowed the computer to produce accurate and realistic synchronization in animated characters that could only previously be produced by humans.

We are not persuaded that any comparable situation is presented here. Instead, as described above, it could not be clearer from the Specification that the present invention is intended to identify advertisements for distribution that are more likely to be relevant to a particular user based on the user's current state of mind, which may be associated with the state of movement of the user device (*see, e.g.*, Spec. ¶¶ 44–46). Considered in light of the Specification, the claimed invention, thus, appears to be focused on achieving a business objective, i.e., providing targeted advertisements to attract potential customers, and not on any claimed means for achieving this goal that improves technology.

We also are not persuaded by Appellants' argument that claim 1 is specifically directed to a solution that is "necessarily rooted in computer technology" (App. Br. 20). Targeted advertising existed before and still exists outside of computer technology and computer networks. *See Tuxis Technologies, LLC v. Amazon.com, Inc.*, No. CV 13-1771-RGA, 2014 WL 4382446, at *5 (D. Del. Sept. 3, 2014) (Matching consumers with a given

product or service "has been practiced as long as markets have been in operation."). And the purported solution here of, at best, generic computer components performing generic computer functions, is not necessarily rooted in computer technology.

We conclude, for the reasons outlined above, that claim 1 recites a method of organizing human activity, i.e., an abstract idea, and that the additional elements recited in the claim are no more than generic computer components used as tools to perform the abstract idea of targeted advertising. As such, they do not integrate the recited abstract idea into a practical application. *See Alice Corp.*, 573 U.S. at 223–24 ("[W]holly generic computer implementation is not generally the sort of 'additional feature[e]' that provides any 'practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.'" (quoting *Mayo*, 566 U.S. at 77)). Accordingly, we agree with the Examiner that claim 1 is directed to an abstract idea.

Step Two of the Mayo/Alice Framework (*2019 Revised Guidance*, *Step 2B*)

Having determined under step one of the *Mayo*/*Alice* framework that claim 1 is directed to an abstract idea, we next consider under Step 2B of the 2019 Revised Guidance, the second step of the *Mayo*/*Alice* framework, whether claim 1 adds specific limitations beyond the judicial exception that are not "well-understood, routine, conventional" in the field, or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

As described above, the only claim elements beyond the abstract idea are the claimed "electronic device" and "information processing system."

Appellants cannot reasonably deny, nor do they, that the operation of these components is well-understood, routine, and conventional, where, as here, there is nothing in the Specification to indicate that the operations recited in claim 1 require any specialized hardware or inventive computer components or that the claimed invention is implemented using other than generic computer components to perform generic computer functions, e.g., receiving, processing, and transmitting information. Indeed, the Federal Circuit, in accordance with *Alice*, has "repeatedly recognized the absence of a genuine dispute as to eligibility" where claims have been defended as involving an inventive concept based "merely on the idea of using existing computers or the Internet to carry out conventional processes, with no alteration of computer functionality." *Berkheimer v. HP, Inc.*, 890 F.3d 1369, 1373 (Fed. Cir. 2018) (Moore, J., concurring) (citations omitted); *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1291 (Fed. Cir. 2018) ("BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept.").

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner's rejection of claim 1, and claim 16, which falls with claim 1. We also sustain the Examiner's rejection of dependent claims 2, 6–15, and 18–24, which are not argued separately except based on their dependence from independent claims 1 and 16 (App. Br. 20).

Obviousness

We are persuaded by Appellants' argument that the Examiner erred in rejecting independent claims 1 and 16 under 35 U.S.C. § 103(a) at least because Zilka, on which the Examiner relies, does not disclose or suggest "determining . . . a user activity state from among a plurality of activity states based on said correlation of data [i.e., a correlation of data relating to a user based on location data, date data, and movement data received for a user device], said user activity state indicating a specific activity currently being performed by said user," as recited in claim 1, and similarly recited in claim 16 (App. Br. 24–27).

Zilka is directed to a system and method for social networking using a vehicular assembly, e.g., a vehicle communication and entertainment system, in communication with a mobile device (Zilka col. 1, ll. 23–29, col. 4, ll. 38–56). Zilka, thus, discloses, for example, that information about social contacts may be retrieved from the mobile device and displayed using the vehicular assembly (*id.*; *see also id.,* col. 21, l. 63 – col. 22, l. 21).

In rejecting claims 1 and 16 under § 103(a), the Examiner cites column 6, lines 42–48; column 19, lines 42–49; columns 21 and 22; column 27, lines 63–65; column 31, lines 60–67; column 51, lines 51–63 and Figures 4, 30, 36, and 62–64 of Zilka as disclosing the argued feature (Final Act. 4–5; *see also* Ans. 15–16). We have carefully reviewed the portions of Zilka, on which the Examiner relies. And we agree with Appellants that there is nothing in the cited portions of Zilka that discloses or suggests determining a user activity state indicating a specific activity currently being performed by said user, as called for in independent claims 1 and 16 (App. Br. 24–27).

The cited portions of Zilka disclose that a user's mobile device may communicate with a vehicle communication and entertainment system and that the communication and entertainment system performs various functions, e.g., displays information regarding the user's social contacts and generates directions to a location identified in the user's calendar entry. But, we find nothing in the cited portions of Zilka that discloses or suggests that the communication and entertainment system determines a user activity state indicating a specific activity currently being performed by the user or that the communication and entertainment system determines the claimed user activity state using a correlation of data relating to the user that has been determined by the system based on location data, date data, and movement data received from the user's mobile device, as called for in claims 1 and 16.

Therefore, we do not sustain the Examiner's rejection of claims 1 and 16 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the rejection of dependent claims 2, 6–15, and 18–24. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("dependent claims are nonobvious if the independent claims from which they depend are nonobvious").

DECISION

The Examiner's rejection of claims 1, 2, 6–16, and 18–24 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1, 2, 6–16, and 18–24 under 35 U.S.C. § 103(a) is reversed.

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