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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* WAHEED MEBED and DMITRY CHECHUY

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Appeal 2018-002856  
Application 15/004,583  
Technology Center 3600

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Before CARL W. WHITEHEAD JR., ERIC B. CHEN, and  
JEREMY J. CURCURI, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. Final Act. 2–7.

We affirm.

## STATEMENT OF THE CASE

Appellants' invention relates to "building a product finder accessible on a website through a widget." Spec. ¶ 2. Claim 1 is illustrative and reproduced below:

1. A computer-implemented method carried out by one or more processors, the method comprising:

providing, by at least one of the one or more processors, a product finder widget, wherein the product finder widget is defined by computer-readable code and is displayed on a web page displayed on a user device, and wherein the product finder widget is created by customizing a specified product category template having selectable attributes associated with products in a product category, wherein the selectable attributes are distinct from the specified category, the product finder widget being incorporated into a third party web page of a third party web server such that it appears integrated with the third party web page displayed on a user device while being hosted by a web server other than the third party web server and wherein the product finder widget is configured to, when displayed on the third party web page on the user device, receive a selection of at least one selectable attribute of the one or more selectable attributes, query a product information database to retrieve result information relating to products in the category corresponding to the at least one selectable attribute, and return the product result information within the product finder widget;

receiving, by at least one of the one or more processors, data identifying at least one of the attributes from the user device; and

sending to the user device, by at least one of the one or more processors, product data describing products having the at least one of the

attributes, whereby the product data can be displayed on the user device via the product finder widget.

## PRINCIPLES OF LAW

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

## ANALYSIS

With respect to claim 1, the Examiner determines the following:

Based on the language of the claims and Specification, the claim is directed to **creating a product finder which returns product information matching specified product attributes**, which is considered to be an abstract idea inasmuch as such activity is considered a “certain method of organizing human activity” and “an idea ‘of itself.’”

Regarding the “certain method of organizing human activity,” **creating a product finder which returns product information matching specified product attributes** involves interpersonal and intrapersonal activities, such as advertising, marketing, and sales activities or behaviors. Several cases have found concepts relating to advertising, marketing, and sales activities or behaviors to be abstract ideas, such as using advertising as an exchange of currency (Ultramercial).

Regarding “an idea ‘of itself,’” **creating a product finder which returns product information matching specified product attributes** is merely an uninstigated concept relating to processes of organizing information and can be performed by a human using pen and paper. Several cases have found uninstigated concepts to be abstract ideas, such as collecting information, analyzing it, and displaying certain results of the collection and analysis (Electric Power Group)

and determining a price using organizational and product group hierarchies (Versata).

Final Act. 4–5; *see also* Final Act. 5–7 (discussing “significantly more” and remaining claims), Ans. 3–9.

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

In determining whether a claim falls within an excluded category, we are guided by the 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, 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 (1854))); 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 187; *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., id.* 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 (citation 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 USPTO recently published revised guidance on the application of § 101. USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 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) (9th ed. 2018)).

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* Memorandum, 84 Fed. Reg. at 56.

*Are the claims at issue directed  
to a patent-ineligible concept?*

### Step One

Claim 1 is a method claim, which falls within the “process” category of 35 U.S.C. § 101. Claim 11 is a computer-readable media claim, which falls within the “manufacture” category of 35 U.S.C. § 101.

Although these claims fall within the statutory categories, we still must determine whether the claim is directed to a judicial exception, namely an abstract idea. *See Alice*, 573 U.S. at 217–18. Thus, we must determine whether the claim recites a judicial exception, and fails to integrate the exception into a practical application. *See Memorandum*, 84 Fed. Reg. at 54–55. If both elements are satisfied, the claim is directed to a judicial exception under the first step of the *Alice/Mayo* test. *See id.*

Step 2A, Prong One

Independent claim 1 is a method claim, and recites the following limitation:

providing, by at least one of the one or more processors, a product finder widget, wherein the product finder widget is defined by computer-readable code and is displayed on a web page displayed on a user device, and wherein the product finder widget is created by customizing a specified product category template having selectable attributes associated with products in a product category, wherein the selectable attributes are distinct from the specified category, the product finder widget being incorporated into a third party web page of a third party web server such that it appears integrated with the third party web page displayed on a user device while being hosted by a web server other than the third party web server and wherein the product finder widget is configured to, when displayed on the third party web page on the user device, receive a selection of at least one selectable attribute of the one or more selectable attributes, query a product information database to retrieve result information relating to products in the category corresponding to the at least one selectable attribute, and return the product result information within the product finder widget.

Thus, this step covers searching for desired products using a product finder widget because the widget “receive[s] a selection of at least one selectable attribute of the one or more selectable attributes”; “quer[ies] a

product information database to retrieve result information relating to products in the category corresponding to the at least one selectable attribute”; and “return[s] the product result information within the product finder widget.”

This claim interpretation is also supported by Appellants’ Specification because Appellants’ Specification describes “[t]he widget may retrieve from an external product reference resource, such as a server and/or database, data relating to product information for one or more products. The retrieved data may be displayed to a web site visitor in substantially real-time via the storefront widget.” Spec. ¶ 7. Appellants’ Specification further describes “[a]lso described herein are processes and products configured to develop search functionality to find products.” Spec. ¶ 16. Appellants’ Specification further describes “[t]he developed product finder may provide a genus-level specification sheet with active labels for specification values that allow an end user (e.g., online customer, webpage viewer) to narrow items from genus to species (e.g., to find a particular product model).” Spec. ¶ 17.

Searching for desired products is the same concept as a customer asking a sales person for help finding desired products by giving a description of the desired products, the sales person determining products that meet the description, and the sales person presenting the determined products to the customer. Such an event sequence includes “sales activities or behaviors,” and is thus “commercial or legal interactions.” Memorandum, 84 Fed. Reg. at 52. Thus, the step recites the abstract concept of “[c]ertain methods of organizing human activity.” *Id.* The recited event sequence also includes a combination of “observation, evaluation,

judgment, opinion,” which are examples of “concepts performed in the human mind.” Memorandum, 84 Fed. Reg. at 52. Thus, the step also recites the abstract concept of “[m]ental processes.” *Id.*

Claim 1 further recites “receiving, by at least one of the one or more processors, data identifying at least one of the attributes from the user device”; and “sending to the user device, by at least one of the one or more processors, product data describing products having the at least one of the attributes, whereby the product data can be displayed on the user device via the product finder widget.”

These steps further describe searching for desired products because these steps further describe giving a description of the desired products, and presenting the determined products to the customer. Thus, these steps further describe “sales activities or behaviors,” and are thus “commercial or legal interactions.” Memorandum, 84 Fed. Reg. at 52. Thus, the recited steps are the abstract concept of “[c]ertain methods of organizing human activity.” *Id.* Thus, these steps also further describe a combination of “observation, evaluation, judgment, opinion,” which are examples of “concepts performed in the human mind.” Memorandum, 84 Fed. Reg. at 52. Thus, the recited steps are also the abstract concepts of “[m]ental processes.” *Id.*

Independent claim 11 recites limitations similar to those discussed with respect to claim 1. Thus, claim 11 also recites an abstract idea.

#### Step 2A, Prong Two

Because claims 1 and 11 recite a judicial exception, we next determine if the claims recite additional elements that integrate the judicial exception into a practical application.

In addition to the limitations of claim 1 discussed above that recite abstract concepts, claim 1 further recites “one or more processors,” “a user device,” “a product finder widget,” “a third party web server,” and “a web server other than the third party web server” wherein the Specification does not provide additional details that would distinguish the additional limitations from generic implementation. *See* Spec. ¶ 49 (describing (Fig. 5) widgets 504, 506, 508, 510, 512 on a web page 502 communicating with a remote database 514, a remote server 516 and retail/price catalog 518); *see also* Spec. ¶¶ 100–109 (describing (Fig. 18) general-purpose computing device 1800).

We do not find the recited computer-related limitations are sufficient to integrate the judicial exception into a practical application. Specifically, the “one or more processors,” “user device,” “product finder widget,” “third party web server,” and “web server other than the third party web server” are not improved in their functioning, but, instead, merely perform the abstract idea. In this case, we do not see any particular machine or manufacture that is integral to the claim; nor do we see any transformation. We do not see any recited elements applying or using the judicial exception in any meaningful way beyond generally linking the judicial exception to the recited elements. *See* Memorandum, Section III(A)(2).

Accordingly, we determine that claim 1 is directed to a judicial exception because it does not recite additional elements that integrate the recited judicial exception into a practical application. Claim 11 recites similar limitations to those discussed with respect to claim 1, and therefore also is directed to a judicial exception.

*Is there something else in the claims  
that ensures that they are directed to significantly  
more than a patent ineligible concept?*

Step 2B

Because claims 1 and 11 are directed to a judicial exception, we next determine, according to *Alice*, whether these claims recite an element, or combination of elements, that is enough to ensure that the claim is directed to significantly more than a judicial exception.

The Specification does not provide additional details about the “one or more processors,” “user device,” “product finder widget,” “third party web server,” and “web server other than the third party web server” recited in the claims, that would distinguish the recited hardware components from generic implementation. *See* Spec. ¶ 49 (describing (Fig. 5) widgets 504, 506, 508, 510, 512 on a web page 502 communicating with a remote database 514, a remote server 516 and retail/price catalog 518); *see also* Spec. ¶¶ 100–109 (describing (Fig. 18) general-purpose computing device 1800).

The conventional or generalized functional terms by which the computer components are described reasonably indicate that Appellants’ Specification discloses conventional components. *See* Spec. ¶¶ 49, 100–109.

In view of Appellants’ Specification, the claimed hardware components, including the “one or more processors,” “user device,” “product finder widget,” “third party web server,” and “web server other than the third party web server” reasonably may be determined to be generic, purely conventional computer elements. Thus, the claims do no more than

require generic computer elements to perform generic computer functions, rather than improve computer capabilities.

Accordingly, we determine that claims 1 and 11 are not directed to significantly more than a patent ineligible concept.

*Appellants' principal arguments*

Appellants argue the rejection fails to mention most of the claim elements. *See* Appeal Br. 4–7. Appellants further argue the Examiner's conclusions are not supported by any facts or analysis. *See* Appeal Br. 8; *see also* Reply Br. 1. Appellants further argue the Examiner's conclusions ignore the express claim language. *See* Appeal Br. 9.

These arguments do not show any error because, as we explain above, the elements of claims 1 and 11 are the abstract concepts of “[c]ertain methods of organizing human activity” and “[m]ental processes.” Memorandum, 84 Fed. Reg. at 52. We also explain that the claims do not recite additional elements that integrate the recited judicial exception into a practical application, and are not directed to significantly more than a patent ineligible concept.

Appellants further argue “[t]he claims recite features which do much more than merely implement the alleged abstract idea.” Appeal Br. 9. “[T]he claimed invention allows developers to easily integrate a high level of functionality into their websites without requiring them to build the product database and query interface from the ground up.” Appeal Br. 9. “The claims, when considered as a series of ordered steps, provide an improvement in computer technology, as noted above, and thus are patent-eligible in accordance with the holding in *McRO*.” Appeal Br. 10.

Similar to the invention in *DDR*, the present system is “necessarily rooted in computer technology” and is directed to overcoming the problem of enabling developers to integrate customized product search and retrieval functionality into their web pages without having to write all of the code for the search and retrieval functionality themselves.

Appeal Br. 11; *see also* Reply Br. 2 (“[T]he problem of integrating an electronic catalog into a web site did come about as a result of the creation of networked computers.”). Appellants further argue “[w]hile the Examiner has stated that the claims have been considered in their entirety, there is no corresponding analysis set forth in the rejection.” Appeal Br. 13. “[U]nder the ‘financial burden’ test proposed by the Examiner, one with unlimited resources could merely use a more powerful and expensive computer to gain the efficiency increases noted by the court in *Enfish*.” Appeal Br. 14.

We disagree. Although we do not dispute that the various hardware components include specific logic for performing the recited steps, Appellants do not persuasively explain why the claimed steps improve *technology* as a whole. *See* MPEP § 2106.05(a). Rather, the claims merely adapt the method of a customer asking a sales person for help finding desired products by giving a description of the desired products, the sales person determining products that meet the description, and the sales person presenting the determined products to the customer to an execution of steps performed by generic computing devices linked together in a network. *See Credit Acceptance Corp. v. Westlake Services*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (“Our prior cases have made clear that mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology.”); *see also Bancorp Services, L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir.

2012) (A computer “employed only for its most basic function . . . does not impose meaningful limits on the scope of those claims.”).

Further, Appellants’ identified improvements are improvements to the abstract idea, not improvements to a technology or computer functionality. Thus, on the record before us, the cited claim limitations do not improve the functionality of the various hardware components, nor do they achieve an improved technological result in conventional industry practice. *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1316 (Fed. Cir. 2016). More particularly, we do not agree that enabling developers to integrate customized search and retrieval functionality into their web pages with the product finder widget improves *technology* as a whole. For example, we do not see any explanation of how the technological functionality of the widget is improved. Rather, the product finder widget allows the method steps to be performed by various generic computing devices.

In addition, we are not applying a “financial burden” test. We have analyzed the claims in light of the USPTO revised guidance.

#### ORDER

The Examiner’s decision rejecting claims 1–20 is 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)(1).

AFFIRMED