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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/835,415	08/07/2007	Scott REDMOND	REDMD-00100	1403
27052	7590	05/08/2019	EXAMINER	
STEPHEN E. ZWEIG 224 VISTA DE SIERRA LOS GATOS, CA 95030			HENRY, RODNEY M	
			ART UNIT	PAPER NUMBER
			3681	
			NOTIFICATION DATE	DELIVERY MODE
			05/08/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SCOTT REDMOND¹

Appeal 2018-003127
Application 11/835,415
Technology Center 3600

Before LINDA E. HORNER, JAMES P. CALVE, and LEE L. STEPINA,
Administrative Patent Judges.

CALVE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Office Action rejecting claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Mr. Redmond is identified as the real party in interest. Br. 3.

CLAIMED SUBJECT MATTER

Claims 1, 16, 37, 38, and 39 are independent. Claim 1 is reproduced below.

1. A method of operating a computerized multi-function social network to provide location based data files, said method comprising:

using a computer system to automatically create links to other users of other mobile wireless communications devices using information from at least one of a first user's other existing Internet social network sites;

wherein said computer system is at least one server connected to the Internet;

using said computer system to locate one or more mobile wireless communication devices operated by said first user;

using said computer system to capture activities on the one or more mobile wireless communication devices operated by either said first user or said other users; and

using said computer system to automatically provide data files to the one or more mobile wireless communication devices operated by either said first user or said other users, independent of types of the one or more mobile wireless communication devices, communication protocol and communication network providers associated with the one or more mobile wireless communication devices, wherein the data files are provided based on the activities of said first user or said other users while operating said one or more mobile wireless communication devices;

wherein said activities comprise previously uploaded or downloaded data;

wherein said data files to comprise information relevant to the location of the first user.

Br. 22 (Claims App.).

REJECTIONS

Claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39 are rejected as directed to patent-ineligible subject matter under a judicial exception to 35 U.S.C. § 101.

Claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kramer (US 2008/0306826 A1, pub. Dec. 11, 2008) and Xiong (US 2007/0233736 A1, pub. Oct. 4, 2007).

ANALYSIS

*Claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39
As Directed to a Judicial Exception*

Appellant argues the claims as a group. *See* Br. 12–13 (arguing claims 16 and 38 for substantially the same reasons as claims 1, 37, and 39). We select claim 1 as representative. The Examiner determines claim 1 recites a method of automatically linking users, locating users, capturing user activity, and providing content to the users, which provides location based content to a social community. Non-Final Act. 3–4. The Examiner also determines claim 1 recites steps of collecting information, analyzing it, and displaying certain results of the collection and analysis, which is an abstract idea. *Id.* The Examiner determines that “a computer system,” “mobile wireless communications devices,” and “server” recite generic computer technology that performs standard electronic recordkeeping and transmission of data functions that do not impose any meaningful limit on the computer implementation of the abstract idea. *Id.* at 5.

Appellant argues that the claims cannot be performed with a pen and paper as a mental process. Br. 12. Appellant argues conventional pieces can supply something more if arranged in a non-conventional way. *Id.* at 13.

The patent laws provide that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. However, “this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted).

Mayo Collaborative Services set forth a framework to distinguish patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. *Alice*, 573 U.S. at 217 (citing *Mayo Collaborative Servs v. Prometheus Labs, Inc.*, 566 U.S. 66, 77 (2012)). First, we determine whether the claims are directed to a patent-ineligible concept. *Id.* If so, we next consider the claim elements individually and as an ordered combination to determine whether additional elements transform the claims into a patent-eligible application. *Id.* This search for an inventive concept seeks an element or combination of elements “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* at 217–218.

Recently, the PTO published guidance for evaluating subject matter eligibility. See *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (“Revised Guidance”). Under Step One, a determination is made whether the claims are in a statutory category of patentable subject matter, i.e., do they recite a process, machine, manufacture, or a composition of matter, identified in 35 U.S.C. § 101. Revised Guidance, 84 Fed. Reg. 50, 53–54; See *Alice*, 573 U.S. at 216; *Mayo*, 566 U.S. at 70.

Next, at Revised Step 2A, Prong One, an evaluation is made whether a claim recites a judicial exception, i.e., an abstract idea set forth in Section I of the Revised Guidance, a law of nature, or a natural phenomenon. *Id.* at 54. To determine if a claim recites an abstract idea, specific limitations that recite an abstract idea must be identified (individually or in combination), and a determination made whether the limitation(s) falls within one or more of the subject matter groupings in Section I of the Revised Guidance. *Id.* (III.A. Revised Step 2A). The three groupings are (1) mathematical concepts, relationships, formulas, or calculations, (2) certain methods of organizing human activity, fundamental economic principles and practices, commercial interactions, managing personal behavior, relationships, or interactions and (3) mental processes and concepts formed in the human mind. *Id.* at 52.

If a claim recites a judicial exception, Prong Two of Revised Step 2A requires a determination to be made whether the claim as a whole integrates the judicial exception into a practical application. *Id.* “A claim that integrates a judicial exception into a practical application will 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.” *Id.* If a judicial exception is integrated, the claim is patent eligible. *See id.* at 54–55.

If a claim does not “integrate” a recited judicial exception, the claim is directed to the judicial exception and further analysis is required under Step 2B to determine whether the claim contains additional elements, considered individually or in combination, that provide an inventive concept, such that the additional elements amount to significantly more than the exception itself. *Id.* at 56; *see Alice*, 573 U.S. at 217–218.

Step One: Does Claim 1 Fall Within a Statutory Category of § 101?

The Examiner finds that claim 1 is directed to a method. Non-Final Act. 3. Appellant does not dispute this determination. Br. 4–11 (asserting that independent claims 1, 37, and 39 recites a method of operating a social network linked computer system, and independent claims 16 and 38 recite systems claims) (Summary of the Claimed Subject Matter). We agree that claim 1 falls within statutory categories of 35 U.S.C. § 101, i.e., a method.

Step 2A, Prong One: Does Claim 1 Recite a Judicial Exception?

We agree with the Examiner that claim 1 recites a method of linking users, locating users, capturing user activity, and automatically providing location-based content to users as part of a social community. Non-Final Act. 3. This method recites an abstract idea involving certain methods of organizing human activity under the Revised Guidance by (1) managing personal behavior or relationships or interactions between people including social activities and following rules and instructions and (2) a fundamental economic practice such as advertising or marketing activities. *See* Revised Guidance, 84 Fed. Reg. 50, 52. The Specification describes this method as managing a multi-function social network where the social networks map relationships between individuals and connect them in different ways. Spec. ¶¶ 1–4. The social networks also provide a way to target customers for economic practices such as advertising over social media. *Id.* ¶¶ 5, 42–47.

In view of this determination, Appellant’s arguments that the claims are not directed to a mental process and none of the claims can be performed by a human with pen and paper (Br. 12, *id.* at 13 (asserting this argument for independent claims 16 and 38)) are not persuasive. They do not address the Examiner’s determination in the Office Action. *See* Ans. 3.

In claim 1, the step of “using a computer system to automatically create links to other users of other mobile wireless communications devices using information from at least one of a first user’s other existing Internet social network sites” is a method of organizing human activity by creating relationships and interactions between people. The Specification describes a social network as “a map of relationships between individuals, indicating ways in which they are connected through various social familiarities ranging from casual acquaintance to close familial bonds.” Spec. ¶ 2.

The steps of “using said computer system to locate one or mobile wireless communication devices operated by said first user” and “using said computer system to capture activities on the one or more mobile wireless communication devices operated by either said first user or said other users” also involve methods of organizing human activity and managing personal behavior by tracking the location of people and their activities to share with other members of their social network or advertisers for targeted advertising.

“[U]sing said computer system to automatically provide data files to one or more mobile wireless communication devices operated by either said first user or said other users . . . wherein the data files are provided based on the activities of said first user or said other users while operating said one or more mobile wireless communication devices” further organizes human activity and personal behavior and interactions by sharing files and activities among members of a social network to promote personal interactions and social activities among members of the social network. *See id.* ¶ 44.

The additional limitation “wherein said activities comprise previously uploaded or downloaded data” addresses this previous point of organizing activity by sharing information among members of the social network.

The final limitation “[W]herein said data files to comprise information relevant to the location of the first user” organizes activity of members of the social network and provides targeted, location-based advertising to members (a fundamental economic practice). The Specification discloses that social networks offer a way to target specific customers with advertising on social media. *Id.* ¶ 5. Thus, a database of current promotional incentives can be cross referenced to current customer location, interest, profile, and other data to execute large targeted promotions to specific customers. *Id.* ¶ 46.

Step 2A, Prong Two: Does Claim 1 Recited an Integrated Application?

Appellant’s arguments that the claims do not preempt all methods of acquiring users, sending messages, and providing data files and include limitations and additional elements that individually or in combination amount to significantly (Br. 12–13) pertain to Step 2B, discussed below.

Appellant argues that the claims do not involve mental steps or purely mental processes because they recite a computer system that automatically provides data files to mobile wireless communications devices and creates links automatically and therefore the claims do not preempt all solutions to the problem. Br. 12. Appellant also argues that the claims recite additional hardware elements that offer meaningful limitations and are arranged in a non-generic, non-conventional way. *Id.* at 13.

The arguments regarding mental processes are not persuasive because we determine that claim 1 recites methods of organizing human activity by managing personal behavior or relationships or interactions between people including social activities and following rules and instructions plus the fundamental economic practice of advertising and marketing activities as discussed above. *See Non-Final Act.* 3–4, 6.

In claim 1, using a generic computer system to provide data files to mobile wireless communication devices of users based on activities of the users and information relevant to the location of the first user does not integrate the above abstract idea into a practical application. *See Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016); *see also Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (Fed. Cir. 2016) (conveying regional content to out-of-region electronic devices involves the concept of information distribution, which has been performed by nearly every form of media with a local distribution, because it is not tied to a particular technology but can be implemented in many ways and therefore is not an integration into a practical application); *Evolutionary Intelligence LLC v. Sprint Nextel Corp.*, 677 F. App'x 679, 680 (Fed. Cir. 2017) (non-precedential) (finding no integration where “tailoring of content based on information about the user—such as where the user lives or what time of day the user views the content—is an abstract idea” and merely “selecting and sorting information by user interest or subject matter [is] a longstanding activity of libraries and other human enterprises.”).

Reciting steps of organizing human activity for advertising in a social network over the Internet does not impose a meaningful limitation on the judicial exceptions. The steps are akin to the fundamental practices of print media (newspapers) to tailor advertising inserts to a customer’s location or the time of day. *Intellectual Ventures I LLC v. Capitol One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015). Steps of collecting and sharing information, even when limited to particular content, without more, is not sufficient to make an abstract idea patent-eligible. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *see Non-Final Act. 3–4.*

Steps of capturing social activity and human behavior from mobile wireless communications devices and automatically providing data files to other devices are recited at a high, generalized level and not tied sufficiently to a particular machine or technology. They fail to integrate the abstract ideas into a practical application. *See id.* at 1353–54; *In re Eberra*, 730 F. App’x 916, 917–18 (Fed. Cir. 2018) (non-precedential) (holding that claims reciting abstract idea of promoting the purchase of a product by providing a spot in a television program as an incentive recited a fundamental economic practice long prevalent in our system of commerce and lacked a degree of particularity sufficient to make the abstract ideas patent-eligible); *West View Research, LLC v. Audi AG*, 685 F. App’x 923, 926 (Fed. Cir. 2017) (non-precedential) (holding that selection of advertising content and presentation of the received content based on a user-selection topical areas were abstract ideas lacking integration into a practical application by other recited steps of receiving or collecting data, retrieving and processing information in response to a data query, and generating a visual or audio response to the data query). No meaningful limitations are imposed on the abstract ideas.

The mere use of the Internet does not integrate the abstract ideas into a practical application. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (“[T]he use of the Internet is not sufficient to save otherwise abstract claims from ineligibility under § 101.”). In *Ultramercial*, the claims were directed to using advertising as an exchange where a user could watch an ad in return for being able to access copyrighted media. *Id.* at 714–15. Showing an advertisement before delivering free content lacked a concrete or tangible integrated application. *See id.* at 715. Here, claim 1 recites a generic environment to implement abstract ideas without meaningful limits.

Step 2B: Does Claim 1 Recite an Inventive Concept?

We next consider whether claim 1 recites any elements, individually or as an ordered combination, that transforms the abstract idea into a patent-eligible application, e.g., by providing an inventive concept. *Alice*, 573 U.S. at 217–18. Appellant does not identify an inventive concept in the claims, except to argue that the claims do not read on a purely mental process and do not preempt any solution to the identified problem because others can use different methods to acquire users, send messages and provide data files. Br. 12. Appellant argues that conventional pieces can supply “something more” under step 2 of the *Alice* test if arranged in a non-conventional way, and the Examiner should consider the additional elements in combination. *Id.* at 13 (arguing the Examiner failed to consider preemption as to claims 16 and 38).

We agree with the Examiner that claim 1 recites generic components such as “a computer system,” “mobile wireless communication devices,” and “a server.” Non-Final Act. 5. We also agree that claim 1 recites these components performing generic functions of receiving, processing, storing, and transmitting data. *Id.*; Ans. 3–4. Appellant’s arguments do not identify an inventive step or “something more” in claim 1’s method steps, nor does Appellant apprise us of error in the Examiner’s determination that claim 1 recites generic components performing generic functions. *See* Br. 12–13.

Claim 1 recites that the computer system creates links to other users of other mobile wireless communications devices using information from a first user’s other Internet social networking sites. Claim 1 does not recite how this step of expanding a network is performed. The Specification discloses only that users can enter links to personal websites they created on other social network sites or the links may be captured automatically. Spec. ¶ 30.

The Specification also discloses that a service provider captures data from each of the top social network links and merges or melts the data into a single page viewable on a handset, e.g., by acquiring Hypertext Markup Language (HTML) and images from target pages. *Id.* ¶ 31. Notably absent is any indication of how the computer system automatically links to other users and other mobile wireless communications devices from a first user's existing Internet social network sites. Thus, we find no inventive step here.

The Specification also discloses that the locations of mobile wireless communications devices can be acquired with a Global Location Resource that is not described in the Specification except to indicate an exemplary GLR code. *Id.* ¶ 33. The Specification also discloses that other protocols may be used within the spirit of the invention. The Specification provides no further details of this component or process, nor any indication that this function is inventive. Nor does claim 1 recite inventive features of this step.

The Specification also discloses generally that “activities on one or more mobile phones are captured.” *Id.* ¶ 35. Neither the Specification nor claim 1 recite any other functions or features of this process. Nor does the Specification describe an inventive step in the way data files are provided to a mobile wireless communications device user. As a user walks in an area, they may receive a colorful message from an advertiser such as “Welcome to the neighborhood! Stop in and pick up this CD to avail 20% off. Send this message to 5 friends right now to avail another 10% off and two of your favorite songs free! See you in 15 minutes for 50 reward points.” *Id.* ¶ 47. There is no further disclosure of this information transmission process nor any indication that inventive software, hardware, communications protocols, or database operations are used to perform this generic, generalized function.

As a result, we determine that claim 1 recites the elements in a way that merely provides a generic environment to carry out the abstract idea of providing location-based advertising to a mobile device of a first user and to other users in the first user's social networks. *See Affinity Labs*, 838 F.3d at 1269 (citing *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 611 (Fed. Cir. 2016)).

Whether analyzed individually or as an ordered combination, claim 1 recites the generic components and functions at too high a level of generality to provide an inventive concept. *E.g.*, *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d at 1368 (holding that instructing one to apply an abstract idea while reciting no more than generic computer elements that perform generic computer tasks does not make the abstract idea patent-eligible) (citing *Alice*, 573 U.S. at 225); *Ultramercial*, 772 F.2d at 716 (holding that “each of those eleven steps merely instructs the practitioner to implement the abstract idea ‘with routine, conventional activit[ies],’ which is insufficient to transform the patent-ineligible abstract idea into patent-eligible subject matter.”).

The decision in *Bascom Global Internet Services* is instructive. In that case, the claims recited a hybrid Internet filtering system that provided the benefits of a filter on a local computer with the benefits of a filter on the Internet Service Provider server as an improvement to existing technological filtering processes by adapting many different users' preferences while being installed remotely in a single location. *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350–51 (Fed. Cir. 2016) (finding an inventive concept in a filtering system that associates individual accounts with their own filtering scheme while locating the system on an ISP server).

The court emphasized in that case that “[t]he claims do not merely recite the abstract idea of filtering content along with the requirement to perform it on the Internet, or to perform it on a set of generic computer components.” *Id.* at 1350 (“Such claims would not contain an inventive concept.”); *see* Non-Final Act. 5–6.

Even if we assume that claim 1 recites a new ordered combination of steps for organizing human activity and sending focused advertising over social networks and the Internet, the result is the same because all of the steps individually and as an ordered combination are in the realm of abstract ideas. *E.g., SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (“The claims here are ineligible because their innovation is an innovation in ineligible subject matter.”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“But, a claim for a *new* abstract idea is still an abstract idea.”); *Versata Develop. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (affirming unpatentability of claims that improved an abstract idea, but not a computer’s performance).

Whether its limitations are considered individually or as an ordered combination, claim 1 lacks an inventive step. It recites generic components that perform generic functions at a high level of generality involving data collection and transmission for the abstract idea of linking users via social networks and targeting them with advertising. *See RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea ... to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093-94 (Fed. Cir. 2016) (patent-ineligible claims were directed to a combination of abstract ideas). The systems of claims 16 and 38 do as well.

Arguments about preemption (Br. 12–13) are resolved by our § 101 analysis. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (where patent claims are deemed patent ineligible, “preemption concerns are fully addressed and made moot”).

For the foregoing reasons, we sustain the rejection of claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39.

*Claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39
As Unpatentable Over Kramer and Xiong*

The dispute in this rejection is whether Xiong teaches “using a computer system to automatically create links to other users of other mobile wireless communications devices using information from at least one of a first user’s other existing Internet social sites” as recited in independent claims 1, 37, and 39.²

The Examiner finds that Xiong teaches this step at paragraphs 171–171 and 203 for claims 1, 37, and 39, and at Figure 19 for claims 16 and 38. *See Non-Final Act.* 11, 14, 18, 22, 26. Appellant argues that Xiong teaches to link existing friends that already are registered on Xiong’s site, but Xiong does not use other existing Internet social network sites to create links to other users from its social network site as claimed. Br. 15. We agree.

² Independent claims 16 and 38 similarly recite “said computer database comprising a list of at least some other existing Internet social network sites of the users of said multi-function social network system, and a list of at least some other existing social networking links between the users of said multi-function social network system.”

Xiong teaches that when a user of Xiong's site invites a friend to join that site, the user can identify and suggest friends of the user to connect with the new user who is joining Xiong's site. Xiong ¶ 171, Fig. 23. The friend connection can be created automatically through an invite option containing a list of the user's friends for the new joining friend to choose from. *Id.* A group of friends can be invited to connect to each other when they log onto Xiong's site and users can be invited to join specific group. *Id.* ¶¶ 172, 173.

We find no indication in these teachings of Xiong's site automatically linking to other social networking sites of a user or even listing other social networking sites that are separate and independent of Xiong's site. There is no indication that the groups described in paragraph 173 and illustrated in Figure 23 involve "other existing Internet social network sites" as recited in all independent claims. These groups on Xiong provide "another way for people to look up people they already known in that group." *Id.* ¶ 173. The Examiner has not explained sufficiently how any of these teachings describe the claimed "other existing Internet social network sites." The Examiner's statement that Xiong teaches this feature in the embodiment of Figure 19 does not address how the disclosures in paragraphs 171–173 of Xiong teach this feature for claims 1, 37, and 39 as the Office Action indicated.

Paragraph 203 of Xiong supports our analysis. It teaches that Xiong's system makes it easy to invite people to a group by allowing a user to invite others to join a group on the site, i.e., Xiong's site. A user can suggest the group to a friend and the system can recommend groups to a user based on email or show the most popular groups among friends. *Id.* ¶ 203. There is no indication that these groups reside on other social network sites different from Xiong's website. Rather, they are groups on Xiong's website.

The Examiner has not made a sufficient showing that these teachings involve creating links to other users from a first user's other existing Internet social network sites. We find no teaching in these paragraphs that Xiong captures a user's other existing Internet social network sites or lists other existing Internet social network sites of a user. Nor has the Examiner explained how the embodiment of Figure 19 of Xiong teaches a list of other existing Internet social network sites.

Figure 19 of Xiong illustrates a Personalized Weekly Update email that helps users of Xiong's site find interesting things to do and make plans. *Id.* ¶ 150. It includes Editorial Picks of interesting events and events posted by friends of users with their friends' top picks based on the most number of friends who list an event. *Id.* ¶¶ 152–155.

The Examiner's finding that Figure 19 teaches top pick social sites with 23 friends (Salsa Sundays) and 11 friends (Masterpieces of Graphic Design) (Ans. 5) does not explain how Figure 19 teaches "a list of at least some existing Internet social network sites" as recited in claims 16 and 38 or creating links automatically to such sites as recited in claims 1, 37, and 39. This section of top picks among your friends provide "Activities for Next 7 Days." Therefore, it is not clear that these recommended activities also link to or involve other Internet social networks as claimed, nor has the Examiner made any findings in this regard. *See* Final Act. 11, 14; Ans. 5.

Accordingly, we do not sustain the rejection of claims 1, 16, or 37–39 or their dependent claims 2–4, 6–13, 17, 19–21, and 32–35 as unpatentable over Kramer and Xiong.

Other Matters

Arguments that the Examiner's actions during prosecution violate the Administrative Procedures Act (Br. 20–21) are not matters appealable to the Board. The Board reviews only “adverse decisions of examiners upon application for patent,” that is claim rejections. *See* 35 U.S.C. § 6(b). The Board does not exercise supervisory authority over patent examiners.

Appellant can, among other things, request the Examiner's Supervisory Patent Examiner to exercise supervisory oversight, or Appellant can petition the Director to invoke supervisory authority under 37 C.F.R. § 1.181(a)(3).

DECISION

We affirm the rejection of claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39 as directed to a judicial exception under 35 U.S.C. § 101.

We reverse the rejection of claims 1–4, 6–13, 16, 17, 19–21, 32–35, and 37–39 as unpatentable over Kramer and Xiong.

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