UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/517,566	10/17/2014	Jeffrey S. Cotton	AUTLT.001C12	1086

20995 7590 12/25/2018

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER
WONG, ERIC TAK WAI

ART UNIT	PAPER NUMBER
3692	

NOTIFICATION DATE	DELIVERY MODE
12/25/2018	ELECTRONIC

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

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

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

jayna.cartee@knobbe.com
efiling@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY S. COTTON

Appeal 2018-004063
Application 14/517,566
Technology Center 3600

Before ERIC S. FRAHM, JOHN A. EVANS, and CARL L. SILVERMAN, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] seeks our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of Claims 2–20. App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

---

[1] Appellant states the real party in interest is the inventor, AutoAlert LLC. App. Br. 5.

[2] Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed October 20, 2017, "App. Br."), the Reply Brief (filed March 5, 2018, "Reply Br."), the Examiner's Answer (mailed January 4, 2018, "Ans."), the Final Action (mailed December 22, 2016, "Final Act."), and the Specification (filed October 17, 2014, "Spec.") for

STATEMENT OF THE CASE

The claims relate to methods, systems and computer program products for generating customer-specific vehicle proposals. *See* Abstract.

INVENTION

An understanding of the invention can be derived from a reading of Claim 2, the sole independent claim in the application which is reproduced below with some formatting added:

> 2. A data mining and analysis system for automotive dealers comprising:
>
> a computer system for automatically identifying which past customers are candidates for new vehicle transactions on terms favorable to the customers for presentation to the candidates as new favorable deal proposals;
>
> the computer system having access to a large database of records of previously sold vehicles, the records including, for each previously sold vehicle:
>
> the customer for the previously sold vehicle and that customer's contact information, the customer comprising a past customer not currently shopping or looking for a new vehicle;
>
> a vehicle identification number of the previously sold vehicle;
>
> data from the deal that resulted in the previous sale to the customer, the data sufficient to show or obtain:
>
> the customer's current payment, which comprises the customer's monthly payment for the previously sold vehicle;

---

their respective details.

an estimated trade value of the previously sold vehicle; and

an estimated payoff amount of the previously sold vehicle;

the computer system configured to analyze the data from the deals that resulted in the previous sales to the past customers and automatically analyze a new deal proposal for all of a large set of past customers to determine which past customers are good prospects to offer a new vehicle on favorable financial terms, where the favorable financial terms comprise at least the same or lower monthly payment for the replacement vehicle, the analysis comprising:

receive changed internal data and changed external data on a periodic basis wherein the period comprises receiving the changed data dynamically,

the changed data comprising data relating to financing data for new suggested vehicles for past customers and values related to the previously sold vehicles for past customers;

automatically determine for each of the past customers a new suggested vehicle for the previously sold vehicle, wherein the determining comprises algorithmically associating the previously sold vehicle with one or more new suggested vehicles based on category, classification, or grouping;

search an inventory of the automotive dealer for the new suggested vehicle for the customer, thereby limiting use of computer resources by analyzing one new suggested vehicle for the determination of whether that customer is a candidate for outreach; determine at least two new proposed payments by:

obtaining a price of the new suggested vehicle;

obtaining a net trade-in equity by combining the estimated trade value with the estimated payoff amount of the previously sold vehicle, wherein the trade-in equity may be either negative equity or positive equity;

determining an amount to be financed by combining the price of the new suggested vehicle with any obtained net trade-in equity, whether positive or negative;

using the amount to be financed and currently-available rate

information for at least two different loan durations to determine the new proposed payments;

comparing the customer's current payment and the new proposed payments to determine one or more differences; and

analyzing the differences to determine if at least one of them meets a criterion to identify the customer for outreach because a new favorable deal proposal has been identified to get that customer into an upgraded vehicle comprising at least one of the new suggested vehicles;

the computer system being configured to adjust at least one changed financing data parameter for suggested new vehicles; and

iteratively analyzing whether the at least one changed financing parameter increases the number of customers who can favorably get into an upgraded new suggested vehicle;

the computer system thereby identifying new revenue opportunities from the past customers that are candidates for new vehicle transactions, even when those candidates are not shopping for a new vehicle, and, for each candidate, identifying at least one specific and available new favorable deal proposal relating to a specific new suggested vehicle; and

a visual alert system for notifying dealership personnel of the new revenue opportunities automatically identified by the computer system by collecting and, for each specific and available proposal, displaying specific proposed transaction details to an automobile marketer to assist in marketing outreach to the candidates;

the visual alert system configured to allow a user to select what is displayed and control the system to instantaneously switch between views;

the visual alert system including at least one deal sheet view that arranges all of the following into a simultaneously-viewable screen for display to a user to facilitate outreach regarding the specific new suggested vehicle to each candidate customer:

the candidate customer's contact information;

the candidate customer's previously sold vehicle, its year, and its vehicle identification number;

the candidate customer's current payment;

the estimated trade value of the previously sold vehicle, the estimated payoff amount of the previously sold vehicle, and the net trade-in equity;

the new specific suggested vehicle and its year; and

multiple options for the new proposed payment under the different loan durations, arranged side by side;

each new proposed payment juxtaposed with the difference between it and the customer's current payment.

Rejection

Claims 2–20 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–8.

ANALYSIS

We have reviewed the rejections of Claims 2–20 in light of Appellant's arguments that the Examiner erred. We have considered in this decision only those arguments Appellant actually raised in the Briefs. Any other arguments which Appellant could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded that Appellant identifies reversible error. Upon

consideration of the arguments presented in the Appeal Brief and Reply Brief, we agree with the Examiner that all the pending claims are unpatentable. We adopt as our own the findings and reasons set forth in the rejection from which this appeal is taken and in the Examiner's Answer, to the extent consistent with our analysis below. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis.

CLAIM 2: NON-STATUTORY SUBJECT MATTER

Prima Facie Case

Appellant contends the Examiner fails to make a prima facie case that Claim 2 recites patent-ineligible subject matter. *See* App. Br. 45.

We conclude that the Examiner did initially set forth a prima facie case of patent-ineligibility, i.e., the Examiner's reasons are sufficient to set forth the basis for the rejection so as to put the patent applicant on notice of the reasons why the applicant is not entitled to a patent. *Cf. In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Preemption

Appellant contends the claims do not seek to preempt or monopolize a fundamental economic practice. App. Br. 39, 44–45.

While preemption may denote patent ineligibility, its absence does not demonstrate patent eligibility. *See FairWarning, IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016). For claims covering a patent-ineligible concept, preemption concerns "are fully addressed and made

moot" by an analysis under the *Mayo/Alice*[3] framework. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). We conduct such an analysis below.

Improper Examination.

Throughout the Brief, Appellant argues the Examiner has improperly applied various USPTO examination guidance documents. *See, e.g.*, App. Br. 51.

The Director of the United States Patent and Trademark Office, not the Board, supervises examination and examiners.[4] If an examiner has procedurally erred, the remedy lies exclusively in petitioning the Director for supervisory review.[5] The Director has not delegated this supervisory authority to the Board.[6]

Mayo-Alice Step 1

The Supreme Court has instructed us to use a two-step framework to "distinguish[] patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those

---

[3] *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012); *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014).
[4] 35 U.S.C. § 3(a)(2)(A) & § 132(a).
[5] 37 C.F.R. § 1.181; *cf.* 35 U.S.C. 6(b) (giving substantive review powers directly to the board).
[6] *Cf.* 37 C.F.R. § 41.3 (delegating some petition authority to the Chief Administrative Patent Judge, not the board) and § 41.50(b) (delegating to the board the discretion to enter a new ground, propose a curative amendment or order additional briefing).

concepts." *Alice*, 134 S. Ct. at 2355. At the first step, we determine whether the claims at issue are "directed to" a patent-ineligible concept. *Id.*

The Examiner finds the independent claims recite a marketing scheme and are directed towards the automated determination of potential customers associated with a particular product. Final Act. 2–3. With non-specific citation of caselaw, the Examiner finds the claimed marketing scheme is similar to a fundamental economic practice such as the performance of a financial transaction which the courts have identified as an abstract idea. *Id.* at 3.

Appellant contends the claims provide "unique solutions to problems that specifically arise in the realm of computer networks," citing generally *DDR Holdings*.[7] Br. 21. According to Appellant, computer searches of automotive databases have become unwieldy because of the large number of search results and because lesser candidate matches are not filtered yielding an overinclusion of prospective results. *Id.* Appellant argues such overinclusion is a problem arising specifically in the computer context. *Id.* According to Appellant, the claims improve search algorithms by using tailored search-terms. *See id.* ("to increase the ***quality*** of the search results, the present inventor identified multiple inputs for the claimed computer system and method").

We are not persuaded. As Appellant characterizes his claims, we find they are similar to those discussed in *Intellectual Ventures I*.[8] "[T]he

---

[7] *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

[8] *Intellectual Ventures I LLC v. Capital One Financial Corporation*, 850 F.3d 1332 (Fed. Cir. 2017).

underlying concept embodied by the limitations merely encompasses the abstract idea itself of organizing, displaying, and manipulating data of particular [customers and automobiles]." *Id.* at 1341. The collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) ("[C]ollecting information [and] . . . analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category."). Information, *per se*, is an intangible. *See Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 451 n.12 (2007).

At Step 1, we agree with the Examiner that the claims are directed to abstract ideas. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) ("[A]ny novelty in implementation of the idea is a factor to be considered only in the second step of the *Alice* analysis.")).

Mayo/Alice Step 2

Where, as here, the claims are found to be "directed to" a patent-ineligible concept, we then "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). This analysis has been characterized as the search for an "inventive concept"— something sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.* (quoting *Mayo*, 566 U.S. at 72).

Appellant contends "the present claims set forth a ***specific, structured graphical user interface*** that resolves a ***specifically identified problem*** in the prior state of the art." App. Br. 27 (analogizing the present claims to those found valid in *Trading Technologies*).[9] Appellant argues the claimed system focuses [customer's] attention directly on the most relevant information and simplifies interactions with potential vehicle customers.

Appellant fails to draw our attention to how the recitations of the claim better focus customer's attention as compared to the prior art. Appellant argues a user "can rely on the 'visual alert system' to 'display[] specific proposed transaction details'" and that the "visual alert system further allows a user to '***instantaneously switch*** between views' with a 'simultaneously-viewable screen' of ***at least 6 different elements***." App. Br. 27–8.

[9] *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017).

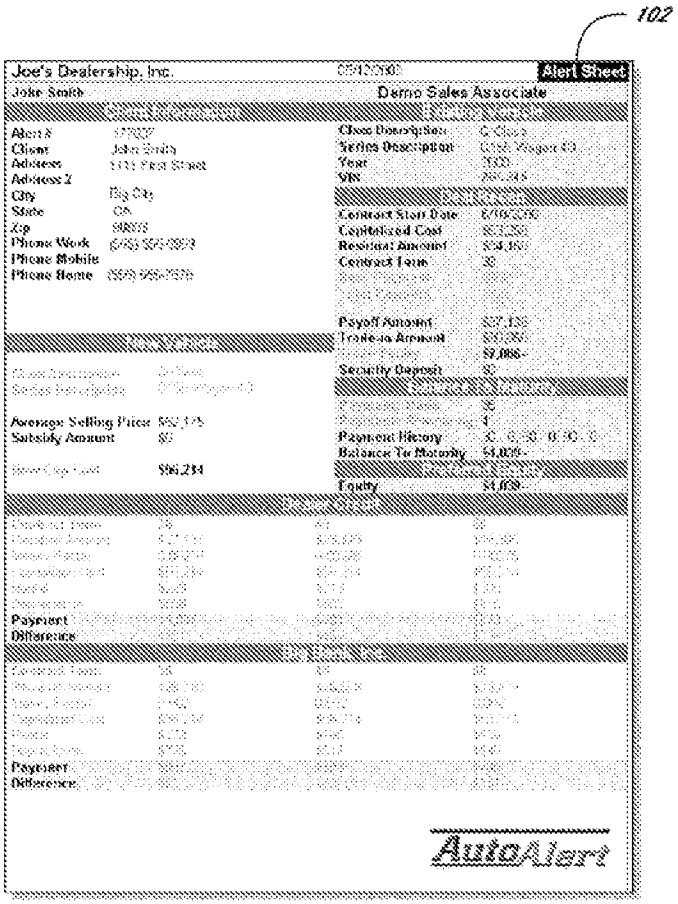

Figure 1A illustrates an example deal sheet generated by one embodiment of a financial terms alert generation system.

Figure 1A illustrates an example deal sheet generated by the claimed financial terms alert generation system. We fail to see, nor has Appellant so directed our attention, to how such an exemplary embodiment of the claims focuses our attention in a superior manner to the prior art. We are not persuaded the Examiner errs.

DECISION

The rejection of Claims 2–20 under 35 U.S.C. § 101 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)(iv).

AFFIRMED