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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SAM LESSIN and JUSTIN ALEXANDER SHAFFER

Appeal 2018-004169
Application 13/681,195
Technology Center 3600

Before CAROLYN D. THOMAS, JEREMY J. CURCURI, and BARBARA A. BENOIT, *Administrative Patent Judges*.

Opinion for the Board filed by Administrative Patent Judge JEREMY J. CURCURI.

Concurring opinion filed by Administrative Patent Judge BARBARA A. BENOIT

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 2, 4–6, 8, 9, 11–17, 19–24, and 28–33. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1, 2, 4–6, 8, 9, 11–17, 19–24, and 28–33 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. Final Act. 2–4.

We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to "sponsoring venues for targeting a social networking system." Spec. ¶ 1. Claims 1, 11, and 17 are illustrative and reproduced below:

> 1. A method comprising:
>
> requesting control of one or more venue devices at one or more venues over a network, for exposing advertiser-controlled content to one or more users of an online social networking system who are located at the one or more venues, comprising:
>
> receiving by the advertiser via an interface a plurality of selectable venues with available venue devices for controlling by the advertiser, the plurality of selectable venues previously identified via geographical data from check-in events by a plurality of users of the online social networking system with GPS-enabled devices;
>
> selecting, via the interface, a venue from the received plurality of selectable venues with available venue devices for controlling by the advertiser;
>
> in response to selection of the venue, receiving by the advertiser via the interface a plurality of selectable device controls for controlling venue devices located at the selected venue; and
>
> selecting a device control from the plurality of selectable device controls for venue devices located at the selected venue;
>
> receiving, by the advertiser, access over a network to the selected device control for the venue devices of the selected venue, wherein advertiser-controlled content is exposed to one or more users of the online social networking system located at

the selected venue via one or more of the venue devices of the selected venue;

generating, by a processor, an ad based on the advertiser-controlled content exposed to the one or more users of the online social networking system located at the selected venue; and

providing the generated ad to the online social networking system for providing to at least one user device associated with a user of the one or more users of the online social networking system.

11. A method comprising:

receiving, from a plurality of advertisers, a plurality of bids for an auction for one or more venues for targeting advertisements in an online social networking system;

determining a winning bid for a selected venue from a winning advertiser of the plurality of advertisers;

providing a plurality of information items about a plurality of users in the online social networking system associated with the selected venue to the winning advertiser through an advertising interface;

receiving a request for control of one or more venue devices at one or more venues over a network, for exposing advertiser-controlled content to one or more users of an online social networking system who are located at the one or more venues, comprising:

providing to the winning advertiser via the advertising interface a plurality of selectable venues with available venue devices for controlling by the winning advertiser the plurality of selectable venues previously identified to the online social networking system via geographical data from check-in events by a plurality of users of the online social networking system with GPS-enabled devices;

receiving, via the advertising interface, a venue from the received plurality of selectable venues with available venue devices for controlling by the winning advertiser;

providing to the winning advertiser via the advertising interface a plurality of selectable device controls for controlling venue devices located at the selected venue; and

receiving selection of a venue device control from the plurality of selectable device controls for the selected venue;

providing, by a processor, access over a network to the selected device control of the selected venue to the winning advertiser through the advertising interface; and

receiving a selection of an action related to the control over the selected device control of the selected venue through the advertising interface, where the action alters the selected device control of the selected venue, wherein advertiser-controlled content is exposed to one or more users of the online social networking system located at the selected venue via one or more of the venue devices of the selected venue;

receiving an ad from the winning advertiser, based on the advertiser-controlled content exposed to the one or more users of the online social networking system located at the selected venue, via the advertising interface for providing for display to at least one user of the plurality of users associated with the selected venue; and

providing the ad for display to the at least one user of the plurality of users associated with the selected venue.

17. A method comprising:

receiving an interface at a venue device from an online social networking system for allowing requests from advertisers for, and for providing control over, one or more device controls of a venue associated with the venue device;

specifying on the venue device via the interface one or more device controls for the venue device as one or more links selectable by an advertiser in the received interface from the online social networking system in response to selection of the venue by the advertiser, for providing access over a network to the selected one or more device controls of the venue to the advertiser in exchange for a fee; and

allowing, by a processor, the access over the network to the selected one or more device controls for the venue device of the venue.

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

The Examiner determines claims 1, 2, 4–6, 8, 9, 11–17, 19–24, and 28–33 are directed to a judicial exception without significantly more. Final Act. 2–4. The Examiner determines

> Claims **1, 11[,]** and **17** are directed to the abstract idea of providing advertisements to users of a social network, a fundamental economic practice. The courts have noted that displaying or providing an advertisement as an exchange or currency (*Ultramercial*), such as provided for in the instant amended claims, for access to "previously identified data from check-in events", is an abstract idea.

Final Act. 2–3; *see also* Final Act. 3–4 (citing Spec. ¶¶ 17, 29) (determining the claims do not recite significantly more than the abstract idea), Ans. 12–13.

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. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014) (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 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that "a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 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). 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 84 Fed. Reg. at 56.

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

Step One

Claims 1, 11, and 17 are method claims, which fall within the "process" 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* 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 limitations:

> [i] requesting control of one or more venue devices at one or more venues over a network, for exposing advertiser-controlled content to one or more users of an online social

> networking system who are located at the one or more venues. comprising:
>
> [ii] receiving by the advertiser via an interface a plurality of selectable venues with available venue devices for controlling by the advertiser, the plurality of selectable venues previously identified via geographical data from check-in events by a plurality of users of the online social networking system with GPS-enabled devices;
>
> [iii] selecting, via the interface, a venue from the received plurality of selectable venues with available venue devices for controlling by the advertiser;
>
> [iv] in response to selection of the venue, receiving by the advertiser via the interface a plurality of selectable device controls for controlling venue devices located at the selected venue; and
>
> [v] selecting a device control from the plurality of selectable device controls for venue devices located at the selected venue.

The overall step of "[i] requesting control of one or more venue devices" describes "advertising[] activities or behaviors" because the request is part of an advertising process. *See* Spec. ¶ 19 (emphasis added) ("*Through the ad buy user interface on the advertiser device 120*, an advertiser may purchase a particular venue and select one or more controls of environmental aspects of the particular venue. A venue control module 116 provides *to an advertiser device 120* access to one or more environmental controls of a selected venue."). Such activities or behaviors are an example of "commercial[] interactions." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*.

The further, more detailed, sub-steps recite the abstract concept of "[m]ental processes." For example, the steps of "[ii] receiving by the

advertiser" and "[iv] receiving by the advertiser" cover receiving data, which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. These recitations are thus the abstract concept of "[m]ental processes." *Id*. The steps of "[iii] selecting... a venue" and "[v] selecting a device control" are decision making, which is one or more of "observation, evaluation, judgment, opinion," which are examples of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. These recitations are thus the abstract concept of "[m]ental processes." *Id*.

Independent claim 1 further recites the following limitation:

> receiving, by the advertiser, access over a network to the selected device control for the venue devices of the selected venue, wherein advertiser-controlled content is exposed to one or more users of the online social networking system located at the selected venue via one or more of the venue devices of the selected venue.

This step describes "advertising[] activities or behaviors" because advertiser-controlled content is exposed to one or more users, which is an example of "commercial[] interactions." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*. This step also describes receiving data, which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation also is thus the abstract concept of "[m]ental processes." *Id*.

Independent claim 1 further recites the following limitation: "generating, by a processor, an ad based on the advertiser-controlled content exposed to the one or more users of the online social networking system located at the selected venue." This step describes "advertising[] activities or

behaviors" because an ad is generated, which is an example of "commercial[] interactions." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*.

Finally, independent claim 1 further recites the following limitation: "providing the generated ad to the online social networking system for providing to at least one user device associated with a user of the one or more users of the online social networking system." This step describes "advertising[] activities or behaviors" because an ad is provided, which is an example of "commercial[] interactions." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*. This step also describes sending data, which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation also is thus the abstract concept of "[m]ental processes." *Id*.

Independent claim 11 is a method claim, and recites the following limitations: "[i] receiving, from a plurality of advertisers, a plurality of bids for an auction for one or more venues for targeting advertisements in an online social networking system"; "[ii] determining a winning bid for a selected venue from a winning advertiser of the plurality of advertisers." These steps describe "sales activities or behaviors," which are examples of "commercial[] interactions," because an auction is a sales activity. Memorandum 84 Fed. Reg. at 52. These recitations are thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*. These steps also describe receiving data, which is an "observation," and decision making, which is one or more of "observation, evaluation, judgement,

opinion," which are examples of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. These recitations also are thus the abstract concept of "[m]ental processes." *Id*.

Independent claim 11 further recites "[iii] providing a plurality of information items about a plurality of users in the online social networking system associated with the selected venue to the winning advertiser through an advertising interface." This step describes "sales activities or behaviors," which are examples of "commercial[] interactions," because the information items are provided to the auction winner. Memorandum 84 Fed. Reg. at 52. These recitations are thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*. These steps also describe receiving data, which is an "observation," which is an example of a "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. These recitations also are thus the abstract concept of "[m]ental processes." *Id*.

Independent claim 11 further recites the following limitations:

> [iv] receiving a request for control of one or more venue devices at one or more venues over a network, for exposing advertiser-controlled content to one or more users of an online social networking system who are located at the one or more venues, comprising:
>
> [v] providing to the winning advertiser via the advertising interface a plurality of selectable venues with available venue devices for controlling by the winning advertiser the plurality of selectable venues previously identified to the online social networking system via geographical data from check-in events by a plurality of users of the online social networking system with GPS-enabled devices;
>
> [vi] receiving, via the advertising interface, a venue from the received plurality of selectable venues with

> available venue devices for controlling by the winning advertiser;
>
> [vii] providing to the winning advertiser via the advertising interface a plurality of selectable device controls for controlling venue devices located at the selected venue; and
>
> [viii] receiving selection of a venue device control from the plurality of selectable device controls for the selected venue;

These limitations are corresponding limitations to limitations [i]–[v] of claim 1 and, thus, these limitations also recite abstract ideas.

Independent claim 11 further recites "[ix] providing, by a processor, access over a network to the selected device control of the selected venue to the winning advertiser through the advertising interface." This step describes receiving data ("providing... access"), which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[m]ental processes." *Id*.

Independent claim 11 further recites

> [x] receiving a selection of an action related to the control over the selected device control of the selected venue through the advertising interface, where the action alters the selected device control of the selected venue, wherein advertiser-controlled content is exposed to one or more users of the online social networking system located at the selected venue via one or more of the venue devices of the selected venue.

This step describes "advertising[] activities or behaviors" because advertiser-controlled content is exposed to one or more users, which is an example of "commercial[] interactions." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*.

Independent claim 11 further recites

> [xi] receiving an ad from the winning advertiser, based on the advertiser-controlled content exposed to the one or more users of the online social networking system located at the selected venue, via the advertising interface for providing for display to at least one user of the plurality of users associated with the selected venue.

This step describes "advertising[] activities or behaviors" because an ad is received, which is an example of "commercial[] interactions." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*. This step also describes providing data, which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation also is thus the abstract concept of "[m]ental processes." *Id*.

Finally, independent claim 11 further recites "[xii] providing the ad for display to the at least one user of the plurality of users associated with the selected venue." This step describes "advertising[] activities or behaviors" because an ad is provided, which is an example of "commercial[] interactions." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[c]ertain methods of organizing human activity." *Id*. This step also describes providing data, which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation also is thus the abstract concept of "[m]ental processes." *Id*.

Independent claim 17 is a method claim, and recites the following limitations:

> [i] receiving an interface at a venue device from an online social networking system for allowing requests from advertisers

> for, and for providing control over, one or more device controls of a venue associated with the venue device;
>
> [ii] specifying on the venue device via the interface one or more device controls for the venue device as one or more links selectable by an advertiser in the received interface from the online social networking system in response to selection of the venue by the advertiser, for providing access over a network to the selected one or more device controls of the venue to the advertiser in exchange for a fee; and
>
> [iii] allowing, by a processor, the access over the network to the selected one or more device controls for the venue device of the venue.

These steps describe remote control of a device control for the venue device for the venue. In particular, step [i] describes receiving data ("receiving an interface"), which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation is thus the abstract concept of "[m]ental processes." *Id*. Step [ii] describes decision making ("specifying...one or more device controls"), which is one or more of "observation, evaluation, judgment, opinion," which are examples of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation also is thus the abstract concept of "[m]ental processes." *Id*. Step [iii] describes receiving data ("allowing access"), which is an "observation," which is an example of "concepts performed in the human mind." Memorandum 84 Fed. Reg. at 52. This recitation also is thus the abstract concept of "[m]ental processes." *Id*.

Step 2A, Prong Two

Because claims 1, 11, and 17 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 various computer-related hardware items. For example, claim 1 recites "one or more venue devices," "a network," "an interface," "a processor," "an online social networking system," and "GPS-enabled devices."

The Specification does not provide additional details about the computer-related hardware items that would distinguish their implementation from a generic implementation. *See* Spec. 17–27 (describing an overview of the invention), 28–47 (describing system architecture).

We do not find the recited computer-related limitations are sufficient to integrate the judicial exception into a practical application. For example, the "one or more venue devices," "network," "interface," "processor," "online social networking system," and "GPS-enabled devices" 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.

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. Claims 11 and 17 recite similar computer-related hardware devices, and are, therefore, also 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, 11, and 17 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 various hardware components recited by claims 1, 11, and 17 include, for example, "one or more venue devices," "a network," "an interface," "a processor," "an online social networking system," and "GPS-enabled devices."

The Specification does not provide additional details about the computer-related hardware items that would distinguish their implementation from a generic implementation. *See* Spec. 17–27 (describing an overview of the invention), 28–47 (describing system architecture).

The conventional or generalized functional terms by which the computer components are described reasonably indicate that Appellants' Specification discloses conventional components. *See* Spec. 17–27 (describing an overview of the invention), 28–47 (describing system architecture)).

In view of Appellants' Specification, the claimed hardware components, including "one or more venue devices," "a network," "an interface," "a processor," "an online social networking system," and "GPS-enabled devices" 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, 11, and 17 are not directed to significantly more than a patent ineligible concept.

Appellants' arguments

Appellants argue the Examiner's alleged abstract idea is untethered from the claim language. *See* App. Br. 5–7; *see also* Reply Br. 5–8, 9–12. Appellants further argue "[e]ven if the examiner is correct that the claim is directed to the abstract idea of providing advertisements to users of a social network, it certainly does not preempt 'all ways of' providing advertisements to users of a social network." App. Br. 7.

These arguments do not show any error because, as we explain above, the elements of claims 1, 11, and 17 are the abstract concepts of "[c]ertain methods of organizing human activity," and "[m]ental processes." Memorandum, 84 Fed. Reg. at 52. Further, we recognize as a threshold matter that the Supreme Court has described "the concern that drives this exclusionary principle [to statutory patentability] as one of pre-emption." *See Alice*, 573 U.S. at 216. Characterizing preemption as a driving concern for patent eligibility, however, is not the same as characterizing preemption as the sole test for patent eligibility. As our reviewing court has explained: "questions on preemption are inherent in and resolved by the [section] 101 analysis," and, although "preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract").

Appellants further argue that many claim elements have not been considered by the Examiner. *See* App. Br. 7–8; *see also* Reply Br. 13–15.

These arguments do not show any error because, as we explain above, the elements of claims 1, 11, and 17 are the abstract concepts of "[c]ertain methods of organizing human activity," and "[m]ental processes." Memorandum, 84 Fed. Reg. at 52. As also explained above, the remaining claim limitations fail to integrate the abstract idea into a practical application, and also do not recite significantly more than the abstract idea.

Appellants further argue "steps common to all three claims (although form the varying perspectives of the advertiser for claim 1, the social networking system for claim 11, and the venue for claim 17) add unconventional limitations, which also confine the claim to a particular useful application, and provide meaningful limitations of the alleged abstract idea." App. Br. 9; *see also* Reply Br. 15, 17–18. Appellants further argue that the claims recite "an unconventional method for getting an advertiser's content to a venue, and allow[] a specificity and control not typically seen in the advertising art." App. Br. 9; *see also* Reply Br. 15–16. Appellants further argue that the claims combine "GPS technology," "networking techniques," and "advertising concepts" in an inventive concept. App. Br. 9; *see also* Reply Br. 16–17.

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 advertising 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).

Finally, Appellants present the following arguments relating to the dependent claims:

> For example, claim 4 recites 'receiving the control of the device control of the selected venue through an application programming interface (API) operating on an external system for the selected venue, such that the external system controls the device control of the selected venue,' and claims 28, 31, and 33 recite 'wherein the one or more device control comprises control over content displayed on one or more screens at the venue.' Each of these further meaningfully limit the application of the alleged abstract idea and thus also demonstrate 'significantly more.'

App. Br. 10; *see also* Reply Br. 8–9.

These arguments do not show any error. Again, Appellants do not persuasively explain why the claimed steps improve *technology* as a whole. *See* MPEP § 2106.05(a). Rather, these claims merely adapt the method of

advertising to an execution of steps performed by generic computing devices. For example, claim 4 recites an "API" but we do not see how the "API" is anything other than generic computer functionality. Similarly, we do not see how "control over content displayed" is anything other than generic computer functionality.

In the Reply Brief, Appellants argue the Examiner's Answer presents a new ground of rejection. Reply Br. 4–5. First, this is a petitionable matter which the board does not review. Second, the claims are addressed in our analysis above based on current guidance on the application of § 101.

ORDER

The Examiner's decision rejecting claims 1, 2, 4–6, 8, 9, 11–17, 19–24, and 28–33 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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SAM LESSIN and
JUSTIN ALEXANDER SHAFFER

Appeal 2018-004169
Application 13/681,195
Technology Center 3600

Before CAROLYN D. THOMAS, JEREMY J. CURCURI, and BARBARA A. BENOIT, *Administrative Patent Judges*.

BENOIT, *Administrative Patent Judge,* concurring.

I agree with the result of the majority opinion affirming the Examiner's rejection of the pending claims under 35 U.S.C. § 101. I, however, would characterize the independent claims differently and, therefore, reach the same result through a somewhat different path.

My analysis focuses on the Guidance's second of the judicially-excepted groupings of the Guidance's certain methods of organizing human activity—commercial or legal interactions including advertising, marketing or sales activities or behaviors. USPTO's 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) ("Guidance").

The Specification indicates that "[s]ocial networking systems have lacked tools to enable advertisers of products to utilize venue specific information in conjunction with their advertisements." Spec. ¶ 3. The Specification summarizes the invention that addresses this issue.

> An advertiser "buys" a venue by controlling something in the environment of a venue, such as by playing music in a bar, changing the channel of a TV, changing drink specials, changing coupons in a store, or subsidizing transport to the venue (e.g., cab fare). The advertiser then advertises to people in the venue, where the ad is based on the thing that was controlled (e.g., an ad for the album for the song that was played in the bar). The ad may be served to users of a social networking system currently located at the venue through a user interface on the social networking system, a display screen at the venue, a mobile ad network, or another ad distribution mechanism.

Spec. ¶ 5.

Claim 1 recites the following limitations: (1) "requesting control of . . . venue devices at . . . venues . . . for exposing advertiser-controlled content to . . . users of an online social networking system who are located at the . . . venues" (comprising four sub-steps) and (2) "receiving, by the advertiser, access . . . for the venue devices of the selected venue, wherein advertiser-controlled content is exposed to . . . users of the online social networking system located at the selected venue via . . . the venue devices of the selected venue." App. Br. 14 (Claims Appendix).

As such, these limitations recite commercial interactions of advertising, marketing or sales activities or behaviors. This is so because the limitations recite basic operations that routinely would take place in an advertising context—selecting an advertising channel through which advertisements are delivered to a target population. For example,

limitations (1) and (2) collectively recite requesting and receiving access to an advertising channel through which to deliver advertisements to a target population—that is, venue devices at venues.

As claim 1 makes clear, advertisements are generated based on the advertiser-controlled content delivered to the users of the online social networking program located at the venues and provided to the user devices at the venues. Claim 1 recites (3) "generating . . . an ad based on the advertiser-controlled content exposed to the one or more users of the online social networking system located at the selected venue" and (4) "providing the generated ad to the online social networking system for providing to at least one user device associated with a user . . . of the online social networking system." App. Br. 14 (Claims Appendix). These limitations collectively recite creating an advertisement that is delivered to a target population—that is, generating an ad and providing the generated ad to the venue device of a user of a social networking system at the venue. Thus, limitations (3) and (4) recite delivering advertising content through the selected advertising channel—venue devices at venues. Limitations (3) and (4), thus, also recite commercial interactions of advertising, marketing or sales activities or behaviors.

The concepts encompassed by claim 1 are similar to concepts found to be directed to abstract ideas in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). In *Ultramercial*, the U.S. Court of Appeals for the Federal Circuit determined the ordered combination of steps in claim at issue—"[t]he process of receiving copyrighted media, selecting an ad, offering the media in exchange for watching the selected ad, displaying the ad, allowing the consumer access to the media, and receiving payment from

the sponsor of the ad"—"all describe an abstract idea, devoid of a concrete or tangible application." 772 F.3d 709, 715 (Fed. Cir. 2014); *see also* Guidance, 84 Fed. Reg. at 52 n.13 (citing *Ultramercial, Inc. v. Hulu* in the context of certain methods of organizing human activity).

For these reasons, I would conclude that claim 1 recites a judicial exception of one of certain methods of organizing human activity—commercial or legal interactions including advertising, marketing or sales activities or behaviors. Guidance, 84 Fed. Reg. at 52.

I would draw the same conclusions for independent claim 11 for similar reasons. Independent claim 11 recites similar limitations to those recited in independent claim 1, albeit in an advertising auction context. *Compare* App. Br. 14 (claim 1), *with* App. Br. 16–17 (claim 11). For example, claim 11 recites "receiving a request for control," and claim 1 similarly recites "requesting control." Claim 11 recites "providing . . . access over a network to the selected device control of the selected venue to the winning advertiser," and claim 1 similarly recites "receiving, by the advertiser, access over a network to the selected device control." In another example, claim 11 recites "receiving an ad from the winning advertiser, based on the advertiser-controlled content exposed to . . . users of the online social networking system located at the selected venue," and claim 1 recites "generating . . . an ad based on the advertiser-controlled content exposed to . . . users of the online social networking system located at the selected venue." Claim 1 and 11 each also recite a limitation for providing the ad to a user of the online social networking system (claim 1) or a user associated with selected venue (claim 11).

Claim 11 recites additional limitations related to an advertising auction context— "receiving, from . . . advertisers, bids for an auction for . . . venues for targeting advertisements in an online social networking system," "determining a winning bid," and "providing . . . information . . . about . . . users in the online social networking system . . . to the winning advertiser." These limitations, however, also relate to advertising, which is a commercial interaction, which, in turn, is one of the certain methods of organizing human activity identified in the Guidance. Guidance, 84 Fed. Reg. at 52. Thus, I would conclude independent claim 11 also recites a judicial exception.

Although independent claim 17 does not recite limitations for generating and providing advertisements, claim 17 recites limitations related to selecting an advertising channel. For example, claim 17 recites "receiving an interface . . . from an online social networking system for allowing requests from advertisers for . . . device controls of a venue" and "specifying . . . via the interface . . . device controls . . . links selectable by an advertiser . . . for providing access over a network to the selected . . . device controls . . . in exchange for a fee." Claim 17 also recites "allowing . . . access over the network . . . to the device controls." In essence, these limitations recite a method for selecting an advertising channel—receiving an interface allowing an advertiser to request control of a venue device, specifying device controls in the interface that may be selected by the advertiser, and providing the advertiser access to the selected device control in exchange for a fee. Because claim 17 recites limitations for selecting an advertising channel, I would conclude that claim 17 also relates to advertising, which is a commercial interaction, which, in turn, is

one of the certain methods of organizing human activity identified in the Guidance. Guidance, 84 Fed. Reg. at 52. For these reasons, I would conclude independent claim 17 recites a judicial exception.

I join the remainder of the majority opinion regarding (i) Step 2A, Prong Two, (ii) Step 2B, and (iii) the majority opinion's response to Appellants' arguments.