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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* ARI EDELSON

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Appeal 2018-004955  
Application 13/449,931  
Technology Center 3600

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Before ANTON W. FETTING, PHILIP J. HOFFMANN, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1 and 3–5.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b). The Board held an oral hearing with Appellant on March 2, 2020.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as “the inventor, Ari Edelson.” Appeal Br. 1.

<sup>2</sup> As discussed during the hearing, the Appeal Brief's Claims Appendix includes errors in the listing of the dependent claims. *See* Appeal Br., Claims App. The correct dependent claims as are set forth in Appellant's Response to Office Action filed May 24, 2016. *See* Response to Office Action filed May 24, 2016, 3.

We AFFIRM.

According to Appellant, the “invention relates . . . to providing recommendations directed to cultural events, restaurants, books or other subjects via an online site.” Spec. 1, ll. 10–11. Claim 1 is the sole independent claim on appeal. Below, we reproduce claim 1, as representative of the appealed claims:

1. A computer readable, non-transitory storage medium having computer readable instructions for instructing at least one computer system to provide recommendations for cultural events of interest to a user, the instructions comprising the steps of:

(a) receiving from the user a listing of individual reviewers to create a user selected group of individual reviewers;

(b) receiving a rating of one or more cultural events by the user indicating whether the user liked or disliked the cultural event;

(c) analyzing opinions of cultural events by one or more of the individual reviewers in the user’s selected group of individual reviewers and rating the opinions to indicate whether the one or more reviewers liked or disliked the cultural event;

(d) for events that have been rated by both the user and one or more of the individual reviewers, comparing the rating of the one or more cultural events by the user against the rating of the one or more cultural events by the individual reviewers in the user’s selected group of individual reviewers to determine whether the user and the individual reviewer like or dislike the same events;

(e) calculating an affinity score based upon the consistency and frequency with which the user and the individual reviewers’ opinions of the one or more cultural events agree or the consistency with which the user and the individual reviewers’ opinions of the one or more cultural events disagree;

(f) using the affinity score and the opinions of the individual reviewers to generate a recommendation as to the likelihood that the user will like or dislike a cultural event that the user has not yet rated;

wherein after a recommendation has been generated that the user will like a cultural event, a determination is made as to whether the liked events are currently and locally available to the user, and if the event is currently and locally available a notice of the event is transmitted to the user over a wireless communication channel to a wireless device associated with the user.

### REJECTION

The Examiner rejects claims 1 and 3–5 under 35 U.S.C. § 101 as reciting only patent-ineligible subject matter.

### PRINCIPLES OF LAW CONCERNING 35 U.S.C. § 101

An invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions, however: “[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, the Supreme Court’s two-step framework, described in *Mayo* and *Alice*, guides us. *See 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.” *Id.* 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 that the courts 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 that the courts 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*, although the claim at issue recited a mathematical formula, 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.”).

Nonetheless, 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.*

2019 Revised Patent Subject Matter Eligibility Guidance

Last year, the U.S. Patent and Trademark Office published revised guidance on the application of § 101. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). 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 i) a fundamental economic practice, or ii) managing personal behavior or relationships or interactions between people, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.05(a)–(c), (e)–(h) (9th Ed., Rev. 08.2017, Jan. 2018)).

A practical application “appl[ies], rel[ies] on, or use[s] 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.” Guidance at 54.

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 either:

(3) adds a specific limitation beyond the judicial exception which is not “well-understood, routine, [or] conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See generally* Guidance.

#### ANALYSIS

Initially, we note that Appellant argues against the Examiner’s § 101 rejection of the claims as a group. *See* Appeal Br. 3–11. We choose independent claim 1 for our analysis, and the remaining, dependent claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37 (c)(1)(iv). For the following reasons, we sustain the Examiner’s rejection of the claims as patent-ineligible.

We determine that in accordance with point (1) of the Guidance referenced above, independent claim 1 recites at least one judicial exception, including an abstract idea. More specifically, as described in further detail, the abstract idea includes certain methods of organizing human activity, such as managing personal behavior or relationships or interactions between people.

With reference to claim 1, as the claim’s preamble states, the claim “provide[s] recommendations for cultural events of interest to a [person, i.e.,

a] user.” Appeal Br., Claims App. (Claim 1). As stated in claim 1’s body, the claim recites: the user creating a group of reviewers (step (a)); receiving information from the user as to whether the user liked or disliked cultural events (step (b)); analyzing each of the reviewers’ opinions to determine whether each of the reviewers liked or disliked cultural events (step (c)); comparing the user’s like or dislike for specific cultural events to the reviewers’ like or dislike for the same specific cultural events (step (d)); calculating an “affinity score” indicating the extent to which the user’s and each reviewer’s opinions agree or disagree for the cultural events (step (e)); generating a recommendation for the user as to whether the user will like or dislike a cultural event that the user has not yet rated, based on the affinity score (step (f)); and providing this recommendation to the user when the not-yet-rated-by-the-user cultural event is currently and locally available to the user. *Id.* Regarding the claimed “affinity score,” as explained in Appellant’s Specification,

the affinity score is determined by determining the number of times a user agrees with an individual reviewer in liking or disliking a particular cultural event. The individual reviewers are then ranked from most number of agreements to least number of agreements and a percentile value is assigned to the individual reviewer based upon their position in the ranking. The percentile ranking is the affinity score.

Spec. 10, ll. 8–13. Thus, the above describes a method of organizing human activity, by managing interactions between people (i.e., the user, and the reviewers), which is an abstract idea. *See* MPEP § 2106.04(a)(2)(II)(A) and the supporting case law cited therein.

In accordance with point (2) of the Guidance referenced above, claim 1 does not recite any additional element that integrates the judicial

exception into a practical application—i.e., something that “appl[ies], rel[ies] on, or use[s] 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.” Guidance at 54; *see also Alice*, 573 U.S. at 223–24. Aside from the abstract idea described above, the claim only generically recites the use of certain arguably-physical hardware—a computer-readable medium, a wireless communication channel, and a wireless device—and, thus, this hardware does not meaningfully limit the claim. Further, in the Specification, Appellant does not describe any of the claimed hardware in such a way as to indicate that the hardware is anything other than generic. Thus, claim 1 does not integrate the non-abstract portion of the claim into a practical application, and does not affect an improvement in any technology or technical field.

Therefore, for the above reasons, independent claim 1 is directed to the above-discussed abstract idea, and does not integrate the judicial exception into a practical application.

In accordance with points (3) and (4) of the Guidance referenced above, claim 1 fails to recite a specific limitation beyond the judicial exception which is not well understood, routine, and conventional in the field, but instead simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Taking the claim elements separately, the claimed hardware, as well as the functions performed by the claimed hardware, are purely conventional. Specifically, claim 1 uses known, generic components to perform their known, basic functions. Although,

arguably, the data processed and transmitted differs, the claim recites the hardware only at a high level of generality. In other words, here the claim recites only well-understood, routine, and conventional functions. *See In re Katz*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”).

For the following reasons, when considered as an ordered combination, claim 1’s hardware does not add anything that is not already present when we consider the steps separately. The hardware and its technological configuration remains the same before, during, and after transmitting the recommendation to the user. Thus, the claim amounts to nothing significantly more than instructions to apply the abstract idea with generic hardware, and does not improve the hardware. Accordingly, the claim recitations are insufficient to transform the abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

We have considered all of Appellant’s arguments in the Briefs, but Appellant does not persuade us of error. We now address certain arguments below.

For the reasons set forth in detail above, we disagree with Appellant that the claims are not directed to an abstract idea. *See Appeal Br. 3–7; see Reply Br. 2–5*. We also disagree with Appellant, for the above reasons, that the claims recite significantly more than the abstract idea. *See Appeal Br. 7–11; see Reply Br. 5–6*.

Appellant’s argument with reference to *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), is not

persuasive of error. *Id.* 7, 9–10. In *BASCOM*, the Court did not find claims eligible, but rather found that the appellee did not provide sufficient evidence to support a 12(b)(6) motion to dismiss in which facts are presumed in the non-movant’s favor. Regardless, a key fact in *BASCOM* was the presence of a structural change in “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.” *BASCOM*, 827 F.3d at 1350. Appellant’s claim 1 has no analogous structural benefit.

#### CONCLUSION

We AFFIRM the Examiner’s § 101 rejection of claims 1 and 3–5.

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 3–5	101	Eligibility	1, 3–5	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED