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Matthew G. McKinney Allen, Dyer, Doppelt & Gilchrist, P.A. 255 South Orange Avenue Suite 1401 Orlando, FL 32801			CHEN, CAI Y	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DON M. BUCKNER<sup>1</sup>

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Appeal 2018-004959  
Application 15/053,049  
Technology Center 2400

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Before CARL W. WHITEHEAD JR., JASON V. MORGAN, and  
ADAM J. PYONIN, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> The identified real party in interest is Appellant. App. Br. 2.

## STATEMENT OF THE CASE

### *Introduction*

The Application is directed to a “system and method for an interactive crowdfunding platform [that] is intended to be the most real of all reality shows,” by having “participants [] explain their product and tell their personal story, which may encourage the public to invest in their product.” Spec. ¶ 24. Claims 1–11, 13–17, 19, and 20 are pending; of these, claims 1, 10, and 16 are independent. *See* App. Br. 14–18. Claim 1 is reproduced below for reference (emphasis added):

1. A method for an interactive crowdfunding platform, the method comprising:
  - storing a graphical user interface (GUI) on a device of a viewer; and
  - receiving a video crowdfunding offering for a product at a production server sent from a data portal, the production server comprising a microprocessor and a memory that stores preferences of the viewer for video format, destination address, specified investment value, investment category, and transmission schedule, wherein the microprocessor
    - filters the received video crowdfunding offering by comparing content of the received video crowdfunding offerings to the stored preferences of the viewer to find a match,
    - generates an alert in response to a matched filtered video crowdfunding offering, the alert includes at least one of the investment category, the investment value, and a universal resource locator (URL), which specifies the location of the data portal, and*
    - transmits the alert to the GUI of the viewer when the viewer has not viewed the matched filtered video crowdfunding offering,*
    - wherein the alert activates the GUI to cause the alert to display on the device of the viewer and to enable connection via the URL to the data portal and to enable the viewer to invest in the product shown in the video crowdfunding offering.*

*References and Rejections<sup>2</sup>*

The following is the prior art relied upon by the Examiner in rejecting the claims on appeal:

Dresner	US 2013/0185228 A1	July 18, 2013
Cohen	US 2014/0025473 A1	Jan. 23, 2014
Clarke	US 2014/0143120 A1	May 22, 2014
Mathews	US 2016/0035034 A1	Feb. 4, 2016

Claims 1–11, 13–17, 19, and 20 stand rejected under 35 U.S.C. § 101 as being patent ineligible. Final Act. 3; App. Br. 5.

Claims 1, 3, 4, 6–8, 10, 11, 13, 14, 16, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dresner and Mathews. Final Act. 4–7.

Claims 2, 5, 15, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dresner, Mathews, and Cohen. Final Act. 8–9.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dresner, Mathews, and Clarke. Final Act. 9.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017). We adopt the Examiner’s findings and conclusions as our own, and we add the following primarily for emphasis.

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<sup>2</sup> The Examiner erroneously lists canceled claims 12 and 18 as part of the rejections. *See* Final Act. 3, 4.

A. 35 U.S.C. § 101

The Examiner determines claim 1 is patent ineligible under 35 U.S.C. § 101, because it is directed to an abstract idea and does not include additional elements that are sufficient to amount to significantly more than the abstract idea. *See* Ans. 9–10; *see also Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (Describing the two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.”).

After the mailing of the Answer and the filing of the Briefs in this case, the USPTO published revised guidance on the application of § 101 (“Guidance”). *See* USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”). Pursuant to the Guidance “Step 2A,” the office first looks to whether the claim recites:

- (1) Prong One: 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) Prong Two: additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then (pursuant to the Guidance “Step 2B”) look to whether the claim:

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

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

*See Memorandum.*

*I. Step 2A*

*Prong One*

Appellant argues the Examiner errs in determining claim 1 is abstract, because it is “not directed to the creation of a contractual relationship.” App. Br. 6; *see also* Reply Br. 2. Instead, Appellant contends claim 1 is “directed to an alert that activates the GUI to cause the alert to display on the device of the viewer and to enable connection via the URL to the data portal and to enable the viewer to invest in the product shown in the video crowdfunding offering.” App. Br. 6 (emphasis omitted).

Pursuant to the Guidance, we are not persuaded the Examiner errs in determining claim 1 recites “the creation of a contractual relationship by way of crowdfunding, which is a commercial arrangement involving contractual relations similar to the fundamental economic practices found by the courts to be abstract ideas.” Ans. 10; *see also* Memorandum, Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception), fn. 13, 84 Fed. Reg. at 54.

Claim 1 recites a method for an interactive crowdfunding platform, including receiving a video crowdfunding offering, filtering the offering, and alerting a viewer of a matched offering which enables the viewer to see and invest in the offering. We agree with the Examiner that such steps are part of creating a “financial contract” (i.e., the investment), because the steps are commercial or legal interactions (including agreements in the form of

contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations) conducted to create the investment. Advisory Act. 2; Memorandum 84 Fed. Reg. at 52; *see also* Spec. ¶ 41 (“An investor agreement is transmitted, at 312, to each viewer that invested and the money is disbursed to the entrepreneur.”). We also determine that such steps are part of “managing personal behavior or relationships or interactions between people,” including “following rules or instructions.” Memorandum, 84 Fed. Reg. at 52.

Accordingly, claim 1 recites the abstract concept under the Guidance of “[c]ertain methods of organizing human activity.” *Id.*

*Prong Two*

We are also not persuaded the Examiner’s rejection is in error pursuant to Step 2A, Prong Two of the Guidance. The recited “alert system that enables a connection via the URL to the data portal,” as discussed by Appellant (Reply Br. 2), is the claimed means of communicating the offering to the viewer. *See* Final Act. 2–3 ([T]he recitation of claim elements ‘transmits...wherein...’ of the claim 1 amounts to no more than stating create a financial contract on a computer and send it over a network.”). Rather than providing a technical benefit, the alert provides a financial/commercial benefit of allowing the offering to “reach the necessary funding and [reduce] the possibility of competitors having their product to market first.” Spec. ¶ 6. Therefore, the use of the alert system with a universal resource locator (URL) is part of the recited abstract idea, itself, as the communication is part

of the organizing human activity;<sup>3</sup> alternatively, at most such elements “do[] no more than generally link the use of a judicial exception to a particular technological environment.” Memorandum, 84 Fed. Reg. at 55; *see also* Ans. 10.

Accordingly, we determine the claim does not integrate the judicial exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54. As the “claim recites a judicial exception and fails to integrate the exception into a practical application,” we must proceed with “further analysis pursuant to the second step of the *Alice/Mayo* test (USPTO Step 2B).” Memorandum, 84 Fed. Reg. at 51.

## *II. Step 2B*

We agree with the Examiner that the claimed elements and combination of elements do not amount to significantly more than the judicial exception itself. *See* Final Act. 2–4; Memorandum, Section III (B) (Step 2B), 84 Fed. Reg. at 56. The claimed additional elements only recite generic components and steps that are well-understood, routine, and conventional. *See* Ans. 10; Spec. ¶¶ 2–6, 23, 38, 42; *Alice*, 573 U.S. at 226. Accordingly, we agree with the Examiner that claim 1 is patent ineligible. *See* Final Act. 3–4.

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<sup>3</sup> *See* Final Act. 2; *see also* *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018); Memorandum, 84 Fed. Reg. 54–55 (“evaluate integration into a practical application by: (a) Identifying whether there are any additional elements recited in the claim beyond the judicial exception(s)”; Memorandum fn. 24 (“USPTO guidance uses the term ‘additional elements’ to refer to claim features, limitations, and/or steps that are recited in the claim beyond the identified judicial exception.”)).

*B. 35 U.S.C. § 103*

*I. Independent Claim 1*

Appellant argues the Examiner’s obviousness rejection of claim 1 is in error, because “there is no mention at all or suggestion in Dresner to include a ‘universal resource locator (URL), which specifies the location of the data portal’” as claimed. App. Br. 8. Appellant further argues that “Matthews [sic] simply does not describe or suggest that ‘the alert activates the GUI to cause the alert to display on the device of the viewer’” as claimed, because “Matthews [sic] suggests that the user must activate the user interface.” App. Br. 10–11 (emphasis omitted).

Appellant’s arguments unpersuasively focus on the individual teachings of each reference, whereas the Examiner’s rejection is based on the combined teachings Dresner and Mathews. *See* Ans. 11 (“the entire claim limitation is met by the combination of Dresner and Matthew [sic]”). Here, the Examiner finds “Dresner disclose[s] the concept of sending [an] email alert” (Ans. 11) and Mathews teaches “the url which contain the link to the video of crowdfunding offer is sent to the user to allow user to see” (Final Act. 6). *See* Dresner ¶¶ 218, 260; Mathews ¶ 11. We agree, as Dresner discloses “email alerts letting an investor know . . . when a new project that meets their interest criteria has been posted on a crowdfunding website,” and Mathews discloses “a user is presented via a user interface with an array of links to various crowdfunding opportunities.” Dresner ¶ 218; Mathews ¶ 11. Appellant does not persuasively show the Examiner errs in finding one of ordinary skill would modify Dresner’s system to send an alert which “activates the GUI to cause the alert to display on the device

of the viewer, and to enable connection via the URL” within the meaning of the claim. *See* Ans. 11–12.<sup>4</sup>

Accordingly, we are not persuaded the Examiner errs in finding the combination of Dresner and Mathews teaches or suggests the limitations of independent claim 1.

## II. *Dependent Claim 5*

Appellant argues the Examiner’s obviousness rejection of claim 5 is in error:

the cited portions of Dresner and Matthews [sic] do not disclose that the alert is transmitted over a wireless communication channel to the device associated with the viewer based upon the destination address and the transmission schedule. Further, the cited portions of Cohen describing a general network arrangement . . . also fails to disclose this feature of Claim[] 5.

App. Br. 12–13.

We are not persuaded the Examiner errs. We agree with the Examiner, and Appellant does not challenge, that Cohen teaches or suggests “the concept of communicating using a wireless network (para. 23).” Ans. 13. Further, Appellant’s argument consists essentially of quoting the entirety of claim 5 and the cited paragraph of Cohen. *See* App. Br. 12–13; Reply Br. 4. Such a response to the Examiner’s findings is insufficient to persuade us of Examiner error, as “mere statements of disagreement . . . do

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<sup>4</sup> We note that, contrary to Appellant’s contention, Mathews discloses the user will *activate the URL*, not that the user will *activate the GUI to cause the alert to display*. *See* Reply Br. 3; Mathews ¶ 11. As the alert contains the URL, the combination of Dresner and Mathews teaches or suggests the recited “alert activates the GUI,” for the user’s view (and subsequent URL activation). *See* Final Act. 3.

not amount to a developed argument.” *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”).

Accordingly, we are not persuaded the Examiner errs in finding the combination of Dresner, Mathews, and Cohen teaches or suggests the limitations of dependent claim 5.

#### CONCLUSION

We sustain the Examiner’s rejections of independent claim 1 and dependent claim 5. Appellant advances no further argument on the remaining claims. *See* App. Br. 7, 11. Accordingly, we sustain the Examiner’s rejections of all pending claims for the same reasons discussed above.

#### DECISION

The Examiner’s decision rejecting claims 1–11, 13–17, 19, and 20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED