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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/710,088	12/10/2012	Jonathan Alan Leblang	25396-0238	6558
126647	7590	09/16/2019	EXAMINER	
Eversheds Sutherland (US) LLP Am 999 Peachtree Street, NW Suite 2300 Atlanta, GA 30309			TRAN, HAI	
			ART UNIT	PAPER NUMBER
			3697	
			NOTIFICATION DATE	DELIVERY MODE
			09/16/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN ALAN LEBLANG

Appeal 2018-005783
Application 13/710,088
Technology Center 3600

Before JOSEPH L. DIXON, JAMES W. DEJMEK, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from a rejection of claims 1–32. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to a purchase of content via a retailer system for delivery via a content provider system using a redemption identifier.

Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method, comprising:

receiving, over at least one network and by a content provider system, from a retailer system, identifying information associated with one or more physical retail items available for purchase in a retail environment, wherein the one or more physical retail items comprise printed content;

identifying, by the content provider system and based at least in part on the identifying information, electronic content associated with the one or more physical retail items;

sending, over the at least one network and by the content provider system to the retailer system, purchase information associated with the electronic content, wherein the purchase information comprises a cost associated with the electronic content;

receiving, over a network and by the content provider system from the retailer system, a request for a redemption identifier that facilitates subsequent receipt of the electronic content by a user device of an intended recipient of the electronic content, wherein access to the electronic content is provided based at least in part on the redemption identifier;

generating, by the content provider system, the redemption identifier based at least in part on the request for the redemption identifier;

¹ Appellant indicates that AMAZON TECHNOLOGIES, INC. is the real party in interest. (Appeal Br. 2.)

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sending, over the at least one network and by the content provider system to the retailer system, the redemption identifier based at least in part on the request for the redemption identifier; and

causing a physical representation of the redemption identifier to be generated.

REJECTION

The Examiner made the following rejection:

Claims 1–32 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. (Final Act. 3.)

ANALYSIS

With respect to independent claims 1, 8, and 23, Appellant does not set forth separate arguments for patent eligibility of the claims. Therefore, we select independent claim 1 as the representative claim for the group and will address Appellant’s arguments thereto. *See* 37 CFR 41.37 (c)(1)(iv) (2017).

Rejection under 35 U.S.C. § 101

Appellant disputes the Examiner’s conclusion that the pending claims are directed to patent-ineligible subject matter. Appeal Br. 4–16; Reply Br. 2–4.

The Supreme Court’s two-step framework guides our analysis of patent eligibility under 35 U.S.C. § 101. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). In addition, the Office recently published revised guidance for evaluating subject matter eligibility under 35 U.S.C. § 101,

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specifically with respect to applying the *Alice* framework. USPTO, 2019 *Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Office Guidance”). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture, or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). *Alice*, 573 U.S. at 217. As part of this inquiry, we must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Tex., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257–58 (Fed. Cir. 2016) (internal citations omitted). Per Office Guidance, this first inquiry has two prongs of analysis (i) does the claim recite a judicial exception (e.g., an abstract idea), and (ii) if so, is the judicial exception integrated into a practical application. 84 Fed. Reg. at 54. Under the Office Guidance, if the judicial exception is integrated into a practical application, *see infra*, the claim passes muster under § 101. 84 Fed. Reg. at 54–55. If the claim is directed to a judicial exception (i.e., recites a judicial exception and does not integrate the exception into a practical application), the next step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception. *Alice*, 573 U.S. at 217; 84 Fed. Reg. at 56.

Here, we conclude Appellant’s claims recite an abstract idea. Appellant’s claims generally recite i) gathering underlying data associated with identifying electronic content, ii) sending purchase information to a prospective purchaser, iii) receiving a request for a redemption identifier for the purchase (and subsequent redemption by a third party), and iv) generating a redemption identifier for electronic content.

This is consistent with how Appellant describes the claimed embodiment of the invention. *See, e.g.*, Spec. ¶¶ 14:

In addition to purchasing products for personal use, consumers often desire to purchase products as gifts for others. For example, consumers may purchase products online that are intended for delivery to others as gifts. In addition, consumers may purchase products at a physical retail location and designate shipment of the purchased products to others as gifts. However, conventional systems fail to provide an effective mechanism for purchasing a product at a retail location (or online) such that the product may be subsequently delivered to an intended recipient based on receipt of an identifier from the intended recipient that is associated with the product purchase;

15–34 (describing various alternatives in reviewing and purchasing electronic content). (*See also* Appeal Br. 7).

Consistent with our Office Guidance and case law, we conclude that i) gathering underlying data associated with identifying electronic content, ii) sending purchase information to a prospective purchaser, iii) receiving a request for a redemption identifier for the purchase (and subsequent redemption by a third party), and iv) generating a redemption identifier for electronic content is one of certain methods of organizing human activity (e.g., a commercial interaction, such as marketing or sales activity)—i.e., an abstract idea.² *See* 84 Fed. Reg. at 52; *see also buySAFE, Inc.*

² Alternatively, the claims may be considered to recite an abstract idea within the category of certain methods of organizing human activity as, more specifically, a fundamental economic practice. *See* 84 Fed. Reg. at 52; *see also Ex Parte Bruich*, Appeal No. 2016-006500, 2018 WL 2967119, at *4 (PTAB May 29, 2018) (“Determining the effectiveness of an advertisement with respect to owners of the particular type of client device is a fundamental economic practice of a transaction because the more successful an advertisement is, the higher probability the sale will occur.”); *Ex Parte Mason*, Appeal No. 2016-004127, 2017 WL 6034320, at *3 (PTAB

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v. *Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (holding that concept of “creating a contractual relationship—a ‘transaction performance guaranty’ ” is an abstract idea); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) (holding that “tailoring content based on the viewer’s location” (i.e., a function of the user’s personal characteristics) is the type of information tailoring that is a fundamental practice long prevalent in our system and is an abstract idea); *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (concluding “[l]ike the basic concept of tailoring content to a user, as in *Intellectual Ventures I*, the basic concept of customizing a user interface is an abstract idea”).

Claim 1 is reproduced below and includes the following claim limitations that recite: i) gathering underlying data associated with identifying electronic content, ii) sending purchase information to a prospective purchaser, iii) receiving a request for a redemption identifier for the purchase (and subsequent redemption by a third party), and iv) generating a redemption identifier for electronic content, emphasized in *italics*:

1. A method, comprising:

Nov. 30, 2017) (explaining predicting advertising effectiveness is a fundamental economic practice because “[d]etermining the effectiveness of advertising allows modification of advertising to maximize product/service exposure while controlling advertising expenditures and determination of a pricing point that results in profitability.”); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378–79 (Fed. Cir. 2017) (holding that concept of “local processing of payments for remotely purchased goods” is a “fundamental economic practice, which *Alice* made clear is, without more, outside the patent system.”)

receiving, over at least one network and by a content provider system, from a retailer system, *identifying information associated with one or more physical retail items available for purchase in a retail environment*, wherein the one or more physical retail items comprise printed content;

identifying, by the content provider system and based at least in part on the identifying information, *electronic content associated with the one or more physical retail items*;

sending, over the at least one network and by the content provider system to the retailer system, *purchase information associated with the electronic content*, wherein the purchase information comprises a cost associated with the electronic content;

receiving, over a network and by the content provider system from the retailer system, *a request for a redemption identifier that facilitates subsequent receipt of the electronic content by a user device of an intended recipient of the electronic content*, wherein access to the electronic content is provided based at least in part on the redemption identifier;

generating, by the content provider system, *the redemption identifier* based at least in part on the request for the redemption identifier;

sending, over the at least one network and by the content provider system to the retailer system, the redemption identifier based at least in part on the request for the redemption identifier;
and

causing a physical representation of the redemption identifier to be generated.

More particularly, the claimed “method” comprises i) gathering underlying data associated with identifying electronic content, ii) sending purchase information to a prospective purchaser, iii) receiving a request for a redemption identifier for the purchase (and subsequent redemption by a third party), and iv) generating a redemption identifier for electronic content. The method further comprises additional extra-solution activity of sending the

redemption identifier and causing a physical representation of the redemption identifier to be generated.

Because the claim recites an abstract idea, we next determine whether the claim integrates the abstract idea into a practical application. 84 Fed. Reg. at 54. To determine whether the judicial exception is integrated into a practical application, we identify whether there are “*any additional elements recited in the claim beyond the judicial exception(s)*” and evaluate those elements to determine whether they integrate the judicial exception into a recognized practical application. 84 Fed. Reg. at 54–55 (emphasis added); *see also* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h) (9th ed., Rev. 08.2017, Jan. 2018).

Here, we find the additional limitation(s) do not integrate the judicial exception into a practical application. More particularly, the claims do not recite (i) an improvement to the functionality of a computer or other technology or technical field (*see* MPEP § 2106.05(a)); (ii) use a “particular machine” to apply or use the judicial exception (*see* MPEP § 2106.05(b)); (iii) a particular transformation of an article to a different thing or state (*see* MPEP § 2106.05(c)); or (iv) any other meaningful limitation (*see* MPEP § 2106.05(e)). *See also* 84 Fed. Reg. at 55.

Rather, the additional limitations merely recite that an informational content of the electronic content, “a network,” and a “content provider system” that generates a physical representation of a redemption identifier. The network is generically recited and “may include, but are not limited to, any one or a combination of different types of suitable communications networks, such as... (Spec. ¶ 38). Appellant’s Specification additionally discloses various generic “processors” at the client, retailer, and content provider computer (*see* Fig. 2, elements 202, 226, 242; ¶¶ 53 (“The

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processor(s) 202 may include any suitable processing unit capable of accepting digital data as input, processing the input data based on stored computer-executable instructions, and generating output data”); 64 (“The processor(s) 226 may include any suitable processing unit capable of accepting digital data as input, processing the input data based on stored computer-executable instructions, and generating output data”); 71 (“The processor(s) 242 may include any suitable processing unit capable of accepting digital data as input, processing the input data based on stored computer-executable instructions, and generating output data.”))

Additionally, the claims do not address a problem necessarily rooted in computer technology or a problem in the software arts (*see* Appeal Br. 7–13); *see also* MPEP § 2106.05(a); Ans. 9–12 distinguishing the relied upon citations.

Appellant contends that the claimed invention is similar to the claims in *Visual Memory* because they solve a technical problem with a technical solution.³ (Appeal Br. 6–7). We disagree with Appellant and find that Appellant’s invention does not solve a technical problem.

Appellant contends that the claimed invention is similar to *Trading Technologies*⁴, and solves a problem specific to digital content access for which there is no manual analog, and results in increased accuracy and computing efficiency by performing specific operations at specific computer systems. (Appeal Br. 12). We disagree with Appellant and find the claimed “method“ to be similar to the problem solved by a consumer buying a gift card or gift receipt for any product (electronic content) and delivery of the

³ *Visual Memory LLC V. NVIDIA Corp.*, 867 F.3d 1253 (2017)

⁴ *Trading Technologies Int’l Inc., v. CQG, Inc. et al.*, 675 F. App’x 1001 (Fed. Cir. 2017)

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gift receipt to a prospective recipient. The gift receipt facilitates subsequent receipt of the product by a third party and the gift receipt is based at least in part on the request for the gift receipt and the approval of gift receipt may be sent to a third party. The final step of causing the physical representation may be performed at any location. As a result, Appellant's contention is unpersuasive.

Appellant argues that the claims are similar to the claims in *McRO Inc. v. Bandai Namco Games America Inc. et al.*⁵ because they are directed to a specific process that improves a technological process. (Appeal Br. 8–11). Appellant contends that the claims are limited to specific implementations with concrete features that allow for managing access to electronic content associated with a physical object via a physically generated machine readable redemption identifier, such that a physical object can be used to access specific digital content that results in increased accuracy and increased efficiency of computing resources by performing certain tasks at a “retailer system” as opposed to a “content provider system” (*see e.g.*, FIG. 2), which results in an improved ability to track active redemption identifiers and redeemed redemption identifiers. (Appeal Br. 8). We disagree with Appellant and find that Appellant's claims do not recite performing the functions at a specific location, but do send and receive data at the retailer. Additionally, Appellant's argument is not commensurate in scope with the claim language because the claim does not recite any tracking or efficiency functions.

Appellant asserts the claimed invention provides a particular solution to a particular problem with specific and concrete operations. (Appeal Br.

⁵ *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)).

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10). Appellant further contends that, the specific sequence of operations, as claimed, allows for the claimed “redemption identifier” to be generated separate from the physical retail item, which allows for the added ability for a user to purchase a subset of content, as opposed to content in its entirety. Appellant also contends the problem solved by the technology of this application is a unique one that is caused by technology — the increase in consumption of digital content has created issues when one user desires to gift digital content to another user, but wants to provide the other user with a tangible item, and the claims allow for managing access to *digital content* while using *physical representations or objects that are associated with the digital content* and allowing for transfer of access rights, for example, by gifting a physical representation of the redemption identifier. (Appeal Br. 10).

We disagree with Appellant and find that the problem solved is similar to a consumer buying a gift card or gift receipt for any product and delivery thereof to a prospective recipient, as discussed above, and that the physical retail item does not specifically form any part of the claimed “method.” For example, there could be a picture of a book or a barcode from a book and merely data is being received regarding the item.

Also, the claims at issue in *McRO* recited a “specific . . . improvement in computer animation” using “unconventional rules” that related “sub-sequences of phonemes, timings, and morph weight sets” to automatically animate lip synchronization and facial expressions for three-dimensional characters that only human animators could previously produce. *McRO*, 837 F.3d at 1302–03, 1307–08, 1313–15. In *McRO*, “the incorporation of the claimed rules” improved an existing technological process. *McRO*, 837 F.3d at 1314.

Here, unlike the claims at issue in *McRO*, Appellant’s claims do not address a problem specifically arising in the realm of computer networks (i.e., generating a physical representation of a redemption identifier for a purchased electronic content does not arise in the realm of computer networks), nor do they improve an existing technological process, but rather merely use computers and computer devices that operate in their normal, expected manner. *See DDR Holdings*, 773 F.3d at 1258–59; *see also Enfish*, 822 F.3d at 1335–36 (distinguishing between claims *wherein the focus of the claims* is on an improvement in computer capabilities and those that invoke a computer as a tool).

Appellant contends that the claims are analogous to *BASCOM Global Internet v. AT&T Mobility LLC*,⁶ because the present claims recite a specific implementation and process that provides benefits over the prior art. Appellant also contends that the claimed operations provide a benefit of managing access to electronic content identified by a physical retail item and a machine readable representation of a redemption identifier, and allowing users to gift digital content access via physical objects, as well as to acquire subsets of content. (Appeal Br. 15).

We disagree with Appellant because the claim does not recite “managing access” to electronic content as part of the claimed “method” that merely recites “wherein access to the electronic content is provided based at least in part on the redemption identifier.”

As discussed above, the claims do not improve an existing technological process. Additionally, unlike the arrangement of elements (i.e., installation of a filtering tool at a specific location) in *BASCOM*, 827

⁶ *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

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F.3d at 1349–50, and contrary to Appellant’s arguments (*see* Appeal Br. 15–16), Appellant’s claims do not recite a non-conventional and non-routine arrangement of known elements.

Rather, Appellant claims the conventional arrangement of a content provider system (computer) sending a redemption identifier and generating a physical representation of the redemption identifier where the rest of the judicial exception is performed. For at least the foregoing reasons, the claims do not integrate the judicial exception into a practical application.

Because we determine the claims are directed to an abstract idea or combination of abstract ideas, we analyze the claims under step two of *Alice* to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73, 77–79 (2012)). As stated in the Office Guidance, many of the considerations to determine whether the claims amount to “significantly more” under step two of the *Alice* framework are already considered as part of determining whether the judicial exception has been integrated into a practical application. 84 Fed. Reg. at 56. Thus, at this point of our analysis, we determine if the claims add a specific limitation, or combination of limitations, that is not well-understood, routine, conventional activity in the field, or simply appends well-understood, routine, conventional activities at a high level of generality. 84 Fed. Reg. at 56.

Appellant further contends the Examiner failed to provide any additional detail or evidence regarding the assertion that the pending claims

or any elements are well-understood, routine, and conventional. (Reply Br. 3–4).⁷

Here, Appellant’s claims do not recite specific limitations (or a combination of limitations) that are not well-understood, routine, and conventional. As discussed above, sending or receiving information (e.g., identifying information, electronic content, purchase information, and generating a redemption identifier) merely requires well-understood functions of a computer/computer network. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”). Moreover, Appellant’s recitation of the claim limitations and conclusory statement that the features of the claims provide significantly more than an abstract idea under Part II of the *Alice/Mayo* test (*see* Appeal Br. 13–16) is not supported by persuasive evidence or reasoning. It is well settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see*

⁷ We note the Specification in paragraph 17 discloses the computers “may be configured to communicate via a network such as a local area network (LAN).” (*See* ¶ 17; *see also* Spec. ¶¶ 36 (“a network such as a local area network (LAN) 124”); 38 (“network(s) 112 may include, but are not limited to, any one or a combination of different types of suitable communications networks... network(s) 206 may include any type of medium over which network traffic may be carried including”); 63 (“The payment network(s) 264 may include any suitable payment network”); 37 (“the content provider system” is disclosed as either a single entity or multiple entities with either a single components or multiple components and “may in certain embodiments, multiple entities may each be associated with a corresponding one or more of the content provider computer(s) and may facilitate, in a distributed fashion, transactions with retailers involving electronic content and delivery of the electronic content to an intended recipient.”)).

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also In re Pearson, 494 F.2d 1399, 1405 (CCPA 1974) (attorney argument is not evidence).

Although the Examiner does not expressly cite to Appellant's Specification or provide extrinsic evidence, we note that Appellant's Specification identifies all the network, processors, and communications are generically described (*see* Spec. ¶¶ 38, 58, 64, 71). Outside of the abstract idea, the additional elements only recite generic computer components and recite functions that are well-understood, routine, and conventional and insignificant extra-solution activity. *Alice*, 573 U.S. at 226. Accordingly, we agree with the Examiner that the claims are patent ineligible.

For the reasons discussed *supra*, we are unpersuaded of Examiner error in representative independent claim 1. Accordingly, we sustain the Examiner's rejection of representative independent claim 1 under 35 U.S.C. § 101 and claims 2–32 not separately argued. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

The Examiner did not err in rejecting claims 1–32 based upon a lack of patent-eligible subject matter.

DECISION

For the above reasons, we sustain the Examiner's patent-eligibility rejection of claims 1–32 under 35 U.S.C. § 101.

DECISION SUMMARY

Claims Rejected	Basis	Affirmed	Reversed
1–32	§ 101	1–32	None

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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