UNITED STATES PATENT AND TRADEMARK OFFICE

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CARSTENS & CAHOON, LLP
P.O. Box 802334
DALLAS, TX 75380-2334

EXAMINER
FADOK, MARK A

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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 NICK BOSSINAKIS
_____

Appeal 2018-006131
Application 13/678,819
Technology Center 3600
_____

Before ST. JOHN COURTENAY III, DENISE POTHIER, and
JOHN EVANS *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of
claims 1, 2, 21, 22, 41, and 42, which are all the claims pending in this
application.[1] Claims 3–20, 23–40, and 43–60 are withdrawn. We have
jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

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[1] The real party in interest is Overall Parts Solutions, Inc. App. Br. 2.

STATEMENT OF THE CASE [2]

Introduction

Appellant's claimed invention relates generally to supply chain management systems and methods. Spec. 3.

Exemplary Claim

1.   A supply chain management system comprising:

(a)   customer order entry subsystem;
(b)   part/product quoting subsystem:
(c)   part/product advertising subsystem;
(d)   vendor order fulfillment subsystem; and
(e)   transportation tracking subsystem;

wherein

said customer order entry subsystem is configured to accept a part/product order from a customer, wherein said part/product order comprises an ordered part/product of a plurality of parts/products stored in a local price/availability/delivery database;

said customer order entry subsystem comprises a status screen configured to display the real-time order status of said ordered part/product and information about said ordered part/product stored In the local price/availability/delivery database;

said part/product quoting subsystem is configured to generate and transmit a quote invitation to a first set of vendors

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[2] We herein refer to the Final Office Action, mailed May 18, 2017 ("Final Act."); Appeal Brief, filed Dec. 18, 2017 ("App. Br."); Supp. Appeal Brief with corrected Claims Appendix, filed Jan. 30, 2018, Examiner's Answer, mailed Mar. 23, 2018 ("Ans."), and the Reply Brief, filed May 23, 2018 ("Reply Br.").

of a plurality of vendors using said part/product order, wherein the plurality of vendors is retrieved from a vendor database;

said part/product quoting subsystem is configured to receive at least one vendor quote for said part/product order in response to the quote invitation;

said at least one vendor quote comprises a quote status further comprising the availability of said ordered part/product, the price of said ordered part/product, and delivery options and statistics of said ordered part/product;

said at least one vendor quote is displayed in said status screen;

said part/product advertising subsystem comprises a vendor advertising database, wherein the vendor advertising database comprises a plurality of advertisements, wherein each of the plurality of advertisements is associated with a second set of vendors of the plurality of vendors, and wherein at least one of the plurality of advertisements is associated with a part/product of the plurality of parts/products, wherein the at least one of the plurality of ads forms at least one context-sensitive vendor advertisement, wherein the associated part/product of the at least one context-sensitive vendor advertisement is said ordered part/product;

[L1] said part/product advertising subsystem is configured to periodically query the plurality of vendors for information regarding the plurality of parts/products and update the vendor *advertising database* and the local price/availability/delivery database with the information regarding the plurality of parts and products;

[L2] said *part/product advertising subsystem is configured to trigger a parts/product vendor advertisement selection process*, wherein the parts/products vendor advertisement selection process determines a selected advertisement from the at least one *context-sensitive vendor advertisement* and an alternate vendor advertisement, wherein

3

the parts/product vendor advertisement selection process retrieves the selected advertisement from the *vendor advertising database*;

said part/product advertising subsystem is configured to display the selected advertisement in said status screen, wherein the selected advertisement comprises an advertising quote for said ordered part/product;

said customer order entry subsystem is configured to permit said customer to select said at least one vendor quote or said advertising quote to define a selected part/product order;

said vendor order fulfillment subsystem is configured to receive said selected part/product order over a communications network and allow a vendor to accept/reject said selected part/product order and provides order status feedback to said customer on said status screen;

said vendor order fulfillment subsystem is configured to execute shipment of the selected part/product associated with said selected part/product order to said customer using optimized delivery routing;

said transportation tracking subsystem is configured to track the physical location of said selected part/product from said vendor to said customer; and

said status screen is configured to display in real-time the status of said shipment at various way-points within said optimized delivery routing.

Supp. App. Br. 2–3, filed January 30, 2018, "Claims Appendix." (Emphasis added regarding the disputed limitations L1 and L2 under pre-AIA 35 U.S.C. § 103(a)).

Rejections

A. Claims 1, 2, 21, 22, 41, and 42 are rejected under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more.

B. Claims 1, 2, 21, 22, 41, and 42 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Scruton et al. (US 2013/0290129 A1, pub. Oct. 31, 2013) (hereinafter "Scruton"), Racco et al. (US 2011/0161182 A1; pub. Jun. 30, 2011) (hereinafter "Racco"), and Ebert et al. (US 2003/0227392 A1; pub. Dec. 11, 2003) (hereinafter "Ebert").

ANALYSIS

We have considered all of Appellant's arguments and any evidence presented. To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We have reviewed the Examiner's rejections A and B as set forth in the Final Action, the Appellant's responsive arguments in the Appeal Brief, and the Examiner's responses to the Appellant's arguments in the Answer. We have also reviewed Appellant's arguments in the Reply Brief.

Based upon our review, and for the reasons discussed below, Appellant does not provide sufficient argument or evidence to persuade us the Examiner erred with respect to all claims 1, 2, 21, 22, 41, and 42, on appeal, as rejected under both Rejections A and B. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

Rejection A of Claims 1, 2, 21, 22, 41, and 42 under 35 U.S.C. § 101

Issue: Under 35 U.S.C. § 101, did the Examiner err by rejecting claims 1, 2, 21, 22, 41, and 42, as being directed to a judicial exception, without significantly more?

Principles of Law — 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. However, the 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." *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (quoting *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo*, 566 U.S. at 75–77). 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." (emphasis omitted)); *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, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as "molding of rubber products" (*Diehr*, 450 U.S. at 193); "tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores" (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 252, 267–68 (1854))); 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.* (alterations in original) (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.*

Subject Matter Eligibility — 2019 Revised Guidance

The USPTO recently published revised guidance on the application of 35 U.S.C. § 101. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("2019 Revised Guidance"). *This new guidance is applied in this Opinion.* Under the 2019 Revised Guidance, we first look to whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, mental processes, or certain methods of organizing human activity such as a fundamental economic practice or managing personal behavior or relationships or interactions between people);[3] 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)).[4, 5]

See 2019 Revised Guidance, 84 Fed. Reg. at 51–52, 55.

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[3] Referred to as "*Step 2A, Prong One*" in the Revised Guidance (hereinafter "*Step 2A, prong 1*").

[4] Referred to as "*Step 2A, Prong Two*" in the Revised Guidance (hereinafter "*Step 2A, prong 2*").

[5] All references to the MPEP are to the Ninth Edition, Revision 08.2017 (rev. Jan. 2018).

A claim that integrates a judicial exception into a practical application applies, relies on, or uses 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. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54. When the judicial exception is so integrated, then the claim is not directed to a judicial exception and is patent eligible under 35 U.S.C. § 101. *Id.*

Only if a claim: (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then evaluate whether the claim provides an inventive concept. *See* 2019 Revised Guidance, 84 Fed. Reg. at 56; *Alice*, 573 U.S. at 217–18.

For example, we look to whether the additional elements of the claim:

(3) add 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, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. [6]

See 2019 Revised Guidance, 84 Fed. Reg. at 56.

Because there is no single definition of an "abstract idea" under *Alice* step 1, the PTO has recently synthesized, for purposes of clarity, predictability, and consistency, key concepts identified by the courts as abstract ideas to explain that the "abstract idea" exception includes the following three groupings:

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[6] Items (3) and (4) continue to be collectively referred to as "*Step 2B*" of the Supreme Court's two-step framework, described in *Mayo* and *Alice*.

1. Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations;
2. Mental processes— concepts performed in the human mind (including an observation, evaluation, judgment, opinion); and
3. Certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions).

See 2019 Revised Guidance, 84 Fed. Reg. at 52.

According to the 2019 Revised Guidance, "[c]laims that do not recite [subject] matter that falls within these enumerated groupings of abstract ideas should not be treated as reciting abstract ideas," except in rare circumstances. Even if the claims recite any one of these three groupings of abstract ideas, these claims are still not "directed to" a judicial exception (abstract idea), and thus are patent eligible, if "the claim as a whole integrates the recited judicial exception into a practical application of that exception." *See* 2019 Revised Guidance, 84 Fed. Reg. at 53.

For example, limitations that **are** indicative of *integration into a practical application* include:

1. Improvements to the functioning of a computer, or to any other technology or technical field — *see* MPEP § 2106.05(a);
2. Applying the judicial exception with, or by use of, a particular machine — *see* MPEP § 2106.05(b);

3. Effecting a transformation or reduction of a particular article to a different state or thing — *see* MPEP § 2106.05(c); and
4. Applying or using the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception — *see* MPEP § 2106.05(e).

In contrast, limitations that are **not** indicative of *integration into a practical application* include:

1. Adding the words "apply it" (or an equivalent) with the judicial exception, or merely include instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea — *see* MPEP § 2106.05(f);
2. Adding insignificant extra-solution activity to the judicial exception — *see* MPEP § 2106.05(g); and
3. Generally linking the use of the judicial exception to a particular technological environment or field of use — *see* MPEP 2106.05(h).

See 2019 Revised Guidance, 84 Fed. Reg. at 54–55 ("Prong Two").

2019 Revised Guidance, Step 2A, Prong One[7]
The Judicial Exception

Under the 2019 Revised Guidance, we begin our analysis by first considering whether the claims recite any judicial exceptions, including certain groupings of abstract ideas, in particular: (a) mathematical concepts, (b) mental steps, and (c) certain methods of organizing human activities.

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[7] Throughout this opinion, we give the claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

The Examiner concludes claims 1, 2, 21, 22, 41, and 42 recite:

the abstract idea of integrating product ordering, vendor order fulfillment and vendor advertising; i.e. comparison shopping (applicant's specification, page 8, lines 23-28).

Final Act. 2.

We agree with the Examiner that the claims recite judicial exceptions that fall into the broad category of certain methods of organizing human activity, including the subcategory of fundamental economic practices, further including commercial interactions, advertising, marketing or sales activities or behaviors, and business relations. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

In the table below, we identify in *italics* the specific claim limitations that we conclude recite the judicial exception. We additionally identify in **bold** the additional claim limitations that are generic computer components:

TABLE ONE

Independent Claim 1	Revised 2019 Guidance
[a] A supply chain management system comprising: (a) customer order entry subsystem; (b) part/product quoting subsystem: (c) part/product advertising subsystem; (d) vendor order fulfillment subsystem; and (e) transportation tracking subsystem;	A machine (system) is a statutory subject matter class. *See* 35 U.S.C. § 101 ("Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.").

[b] wherein said customer order entry subsystem is configured to accept a part/product order from a customer, wherein said part/product order comprises an ordered part/product of a plurality of parts/products stored in a local price/availability/delivery **database**;	Order acceptance and order entry are insignificant extra-solution activities to the judicial exception — *see* MPEP § 2106.05(g); i.e., data gathering. *See* 2019 Revised Guidance, 55 n.31. Additional element – a generic database.
[c] said customer order entry subsystem comprises **a status screen** configured to display the real-time order status of said ordered part/product and information about said ordered part/product stored In the local price/availability/delivery **database**;	Displaying real-time order status is insignificant extra-solution activity. 2019 Revised Guidance, 55 n.31; *see* also MPEP § 2106.05(g). Additional elements – a generic status screen and database.
[d] said part/product quoting subsystem is configured to generate and transmit *a quote invitation to a first set of vendors* of a plurality of vendors using said *part/product order*, wherein the plurality of vendors is retrieved from a vendor **database**;	Abstract idea, i.e., quotes and associated orders fall into the category of a fundamental economic practice, including the subcategories of commercial interactions, advertising, marketing or sales activities or behaviors, and business relations. Additional element – a generic database.

[e] said part/product quoting subsystem is configured to receive at least *one vendor quote* for said *part/product order* in response to the quote invitation;	Abstract idea, i.e., quotes and associated orders fall into the category of a fundamental economic practice, including the subcategories of commercial interactions, advertising, marketing or sales activities or behaviors, and business relations.
[f] said at least one vendor *quote comprises a quote status* further comprising the availability of said *ordered* part/product, the price of said ordered part/product, and delivery options and statistics of said ordered part/product;	Abstract idea, i.e., quotes and associated orders fall into the category of a fundamental economic practice, including the subcategories of commercial interactions, advertising, marketing or sales activities or behaviors, and business relations.
[g] said at least one vendor quote is displayed in said **status screen**;	Displaying at least one vendor quote is insignificant extra-solution activity. 2019 Revised Guidance, 55 n.31; *see* also MPEP § 2106.05(g). Additional element – a generic status screen.
[h] said part/product advertising subsystem comprises a vendor *advertising* **database**, wherein the vendor advertising **database** *comprises a plurality of advertisements*, wherein each of the plurality of advertisements is associated with a second set of	Additional element – a generic database. Abstract idea, i.e., advertising is a fundamental economic practice, including commercial interactions, advertising, marketing or sales

vendors of the plurality of vendors, and wherein at least one of the plurality of advertisements is associated with a part/product of the plurality of parts/products, wherein the at least one of the plurality of ads forms at least one context-sensitive vendor advertisement, wherein the associated part/product of the at least one context-sensitive vendor advertisement is said ordered part/product;	activities or behaviors, and business relations.
[i] said part/product advertising subsystem is configured to *periodically query* the plurality of vendors for information regarding the plurality of parts/products and update the vendor advertising **database** and the local price/availability/delivery **database** with the information regarding the plurality of parts and products;	Periodically querying for information is insignificant extra-solution activity. 2019 Revised Guidance, 55 n.31; *see* also MPEP § 2106.05(g). Additional element – a generic database.
[j] said part/product advertising subsystem is configured to trigger a parts/product vendor *advertisement selection* process, wherein the parts/products vendor advertisement selection process determines *a selected advertisement* from the at least one context-	Abstract idea, i.e., advertisement selection is a fundamental economic practice, including commercial interactions, advertising, marketing or sales activities or behaviors, and business relations.

sensitive vendor *advertisement* and an alternate vendor *advertisement*, wherein the parts/product vendor advertisement selection process retrieves the *selected advertisement* from the vendor *advertising* **database**;	Additional element – a generic database.
[k] said part/product advertising subsystem is configured to *display the selected advertisement* in said **status screen**, wherein the selected *advertisement* comprises an *advertising quote* for said ordered part/product;	Displaying the selected advertisement is insignificant extra-solution activity. 2019 Revised Guidance, 55 n.31; *see* also MPEP § 2106.05(g). Abstract idea, i.e., advertising is a fundamental economic practice, including commercial interactions, advertising, marketing or sales activities or behaviors, and business relations.
[l] said customer order entry subsystem is configured to permit said customer to *select said at least one vendor quote or said advertising quote* to define a selected part/product order;	Abstract idea, i.e., selecting quotes for orders or advertising are a fundamental economic practice, including commercial interactions, advertising, marketing or sales activities or behaviors, and business relations.
[m] said vendor order fulfillment subsystem is configured to *receive said selected part/product order* over **a communications network** and allow a vendor to accept/reject said selected part/product order and	receiving/accepting/rejecting the order is insignificant extra-solution activity to the judicial exception. *See* 2019 Revised Guidance, 55 n.31.

provides order status feedback to said customer on said **status screen**;	Additional elements – a generic communications network and status screen.
[n] said vendor order fulfillment subsystem is configured to execute shipment of the selected part/product associated with said selected part/product order to said customer using optimized delivery routing;	Executing the shipment of products is insignificant extra-solution activity. 2019 Revised Guidance, 55 n.31; *see* also MPEP § 2106.05(g).
[o] said transportation tracking subsystem is configured to track the physical location of said selected part/product from said vendor to said customer; and	Tracking locations of products is insignificant extra-solution activity. 2019 Revised Guidance, 55 n.31; *see* also MPEP § 2106.05(g).
[p] said **status screen** is configured to display in real-time the status of said shipment at various way-points within said optimized delivery routing.	Displaying the status of a shipment is insignificant post-solution activity. 2019 Revised Guidance, 55 n.31; *see* also MPEP § 2106.05(g). Additional element – a generic status screen.

We note the additional limitations of generic computer components, which we find are at least the "status screen," "communications network," and the "database," as recited each of independent claims 1, 21 and 41. These additional limitations are identified in **bold** in Table One above, and are addressed *infra* under *Step 2A, prong two,* MPEP § 2106.05(f). We note

the preamble of independent claim 41 recites a "computer usable medium" as an additional limitation.

Remaining independent claims 21 and 41 recite similar language of commensurate scope that we conclude also falls into the same abstract idea categories mapped above in Table One for independent system claim 1. Because we conclude all claims on appeal recite an abstract idea, as identified above, under *Step 2A, Prong One*, we proceed to *Step 2A, Prong Two*.

2019 Revised Guidance, Step 2A, Prong Two

Integration of the Judicial Exception into a Practical Application

Pursuant to the 2019 Revised Guidance, we consider whether there are additional elements set forth in the claims that integrate the judicial exception into a practical application. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54–55. We have identified *supra* the additional elements recited in each of independent claims 1, 21, and 41, i.e., at least the generic "status screen," "communications network, and "database." *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

MPEP § 2106.05(a)
Improvements to the Functioning of a Computer or
to Any Other Technology or Technical Field

Under MPEP § 2106.05(a), Appellant contends the claims amount to significantly more than an abstract idea:

> In *Trading Techs, Int'l, Inc, v. CQG, Inc.*, the Federal Circuit reviewed the patentability of a graphical user interface (GUI) used for stock trading. Specifically the patent covered a trading system that uses a GUI that dynamically displays bid and asked prices. *CQG* argued that the patent was invalid because it covered well-known trading conceptions and simply

described displaying market information in a grid, The Federal Circuit disagreed and held that because the patents "require a specific, structured graphical user interface" and the prescribed functionality related to the interface, the patents were not directed to abstract ideas. "The graphical user interface system of these two patents is not an idea that has long existed, the threshold criterion of an abstract idea and ineligible concept," the court wrote.

App. Br. 22 (emphasis added).

Trading Technologies International

In response to Appellant's arguments regarding *Trading Technologies International, Inc. v. CQG, INC.* (675 Fed.Appx. 1001 (Fed. Cir. 2017)), we note *Trading Technologies* is non-precedential and thus is not a controlling case authority that we must consider in this appeal.

Moreover, we conclude the claims on appeal are *silent* regarding specific limitations directed to an *improved* status screen, communications network, or database. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. *See* independent claims 1, 21, and 41.

Therefore, on this record, we conclude claim 1 does not recite an improvement to the functionality of a computer or other technology or technical field. *See* MPEP § 2106.05(a).

MPEP §§ 2106.05(b) and (c)
The Bilski Machine-or-Transformation test ("MoT")
as applied to method claims 21 and 22

The Supreme Court cautions that the *MoT* test is not the sole test, but may provide a useful clue:

This Court's precedents establish that the machine-or-transformation test is a useful and important clue, an investigative tool, for determining whether some claimed

> inventions are processes under § 101. The machine-or-transformation test **is not the sole test** for deciding whether an invention is a patent-eligible "process."

Bilski, 561 U.S. at 604 (emphasis added).

Here, Appellant advances no arguments regarding the *Bilski MoT* test. In any event, because generic computer components such as "a status screen," "a communications network," and a "database" are recited in method claims 21 and 22, we conclude these specific claims do not define or rely upon a "particular machine." *See* MPEP § 2106.05(b). Further, we conclude method claims 21 and 22 do not transform an article to a different state or thing. *See* MPEP § 2106.05(c).

MPEP § 2106.05(e) — Meaningful Claim Limitations [8]

Under MPEP § 2106.05(e), Appellant argues: "Even if Applicant's claims were directed to an abstract idea, Applicant's claims nevertheless recite other *meaningful* limitations that amount to significantly more than a mere patent on 'integrating product ordering, vendor order fulfillment and vendor advertising' or to the abstract idea of 'comparison shopping.'" App. Br. 23 (emphasis added).

However, because Appellant's argue *BASCOM* in support of this argument, and urge that "the context sensitivity built into Applicant's claims is not a conventional or routine feature for advertisements" (*id*.), we will

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[8] MPEP § 2106.05(e): "Applying or using the judicial exception in some other *meaningful* way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception." (emphasis added).

address Appellant's arguments *infra* under *Step 2B* of our analysis (*Inventive Concept*).[9]

Appellant additionally argues: "Like in *DDR*, the claimed solution here is necessarily rooted in computer technology to address a problem specifically arising in the realm of *automated customization*. Rather, these are *meaningful limitations* that confine the claim to a particular useful application." App. Br. 24 (emphasis added).

We do not find that Appellant's claims are similar to the claimed solution the court held to be patent-eligible in *DDR*. In *DDR,* the Federal Circuit applied the Supreme Court's *Alice* two-step framework, and upheld the validity of *DDR*'s patent on its web-page display technology. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255 (Fed. Cir. 2014).

The problem addressed by Appellant's claims is not similar or otherwise analogous to the specific technical problem addressed by the subject claims in *DDR,* which were directed to *retaining a website visitor when the visitor clicked on a third-party merchant's advertisement on the host website*. Instead of taking the visitor to the third-party merchant's website (and thus losing the visitor to the third-party merchant), *DDR's* claimed system generated *a hybrid web page* that: (1) displayed product information from the third-party merchant, but also, (2) retained the host website's "look and feel."

Here, Appellant's claim 1 is not directed to a website that retains the host website's "look and feel" while displaying product information from

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

the third-party merchant, as was the case in *DDR*. *See DDR,* 773 F.3d at 1257. Although Appellant's status screen is configured to display the real-time status of the shipment at various way-points within the optimized delivery routing (claim 1), we find displaying such shipping status information is merely an *improvement* in the *informational content* that is intended to be viewed and evaluated by a person involved in the fundamental economic practice of commercial interactions, advertising, marketing or sales activities or behaviors, and business relations. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. *Cf. Trading Technologies International, Inc. v. IBG LLC*, 921 F.3d 1378, 1384 (Fed. Cir. 2019) ("Information, whether displayed in the form of price values or P&L values, is abstract."). Moreover, an improved abstract idea is still an abstract idea. See *Mayo*, 566 U.S. at 90 (holding that a novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible).

Therefore, on this record, we conclude independent system claim 1 has no persuasively argued meaningful limitations as considered under MPEP § 2106.05 (e).

MPEP § 2106.05(f)
Merely including instructions to implement
an abstract idea on a computer, or
merely using a computer as a tool to perform an abstract idea

Without more, we conclude Appellant's claimed invention merely implements the abstract idea using generic computer components, including a status screen, communication network, and a database. *See* Claims 1, 21, and 41. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. We note the

supporting description of generic computer and network components in the

Specification, for example:

> Some preferred embodiments may integrate the functionality of one or more subsystems into a single functional unit. It is anticipated that these subsystems may be optimally implemented on a computing device executing machine instructions read from a computer readable medium.
> ### System Overview (0400)
> The present invention system may be broadly described as depicted in FIG. 4 (0400). In this context, a customer (0412) interacts with a customer order status subsystem (0413) that communicates *via the Internet (0401) (or some other communications network*) with a vendor order fulfillment subsystem (0420) to place orders for parts/products.

Spec. 16, ll. 7–19 (emphasis added).

Exemplary Status Screen (1300)

> The present invention may in many preferred embodiments incorporate an integrated status display screen as generally illustrated in FIG. 13

Spec. 25, ll. 5–8 (emphasis added).

Regarding the claimed databases, see Spec. 33, ll. 4–6: "All of these

transmissions may utilize web services in conjunction with a parts quoting

database to accomplish this functionality in a distributed computer network

environment." (emphasis added).

Regarding the "computer usable medium" recited in the preamble of

claim 41, "The present invention *does not limit the type of physical media* on

which this software may reside." Spec. 17, ll. 13–14 (emphasis added).

Further regarding the recited "communications network" (claim 1),

we find Appellant's claimed invention does not provide a solution

"necessarily rooted in *computer technology* in order to overcome a problem specifically arising in the realm of computer networks," as considered by the court in *DDR*, 773 F.3d at 1257. (emphasis added).

Therefore, we agree with the Examiner:

> It is further noted that unlike the claims in *DDR holdings LLC v. Hotels.com* which set forth a specific way in which a computer/the Internet were manipulated to achieve the claimed functions, the claims at issue broadly recite the use of a machine in an online environment without specifying even arguably new physical components and without specifying any new processes other than those directed to the performance of managing purchasing in a supply chain itself.

Final Act. 8.

See also Trading Technologies, 921 F.3d at 1384 ("'mere automation of manual processes using generic computers' . . . 'does not constitute a patentable improvement in computer technology.'") (citing *Credit Acceptance Corp. v. Westlake Servs*., 859 F.3d 1044, 1055 (Fed. Cir. 2017)).

We emphasize that *McRO, Inc. v. Bandai Namco Games America Inc*., (837 F.3d 1299 (Fed. Cir. 2016)), guides: "[t]he abstract idea exception prevents patenting a *result* where 'it matters not by what process or machinery the result is accomplished.'" 837 F.3d at 1312 (quoting *O'Reilly v. Morse*, 56 U.S. 62, 113 (1854)) (emphasis added).

MPEP § 2106.05(g)
Adding insignificant extra-solution activity
to the judicial exception

As mapped in the right column of Table 1 above, we conclude claim 1 also recites extra or post-solution activities that courts have determined to be

24

insufficient to transform judicially excepted subject matter into a patent-eligible application. *See* MPEP § 2106.05(g); 84 Fed. Reg. at 55 n.31.

MPEP § 2106.05(h)
Generally linking the use of the judicial exception to a particular technological environment or field of use

The Supreme Court guides: "the prohibition against patenting abstract ideas 'cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or [by] adding 'insignificant post solution activity.'" *Bilski v. Kappos*, 130 S. Ct. 3218 (2010), (quoting *Diamond v. Diehr*, 450 U.S. 175, 191–92 (1981)). We note Appellant does not advance arguments in the Briefs regarding any purported lack of preemption.

Nor do claims 1, 2, 21, 22, 41, and 42 on appeal present any other issues as set forth in the 2019 Revised Guidance regarding a determination of whether the additional generic elements integrate the judicial exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 55.

Thus, under *Step 2A, Prong Two* (MPEP §§ 2106.05(a)–(c) and (e)–(h))*,* we conclude the additional elements in claims 1, 2, 21, 22, 41, and 42 **do not integrate the judicial exception into a practical application.** Therefore, we proceed to *Step 2B*, *The Inventive Concept*.

The Inventive Concept – Step 2B

Under the 2019 Revised Guidance, 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 adds a specific limitation

beyond the judicial exception that is not "well-understood, routine, conventional" in the field (*see* MPEP § 2106.05(d)); **or**, simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

BASCOM [10]

Appellant cites to *BASCOM* in support, and urge:

Applicant's claim recite numerous meaningful limitations that represent something significantly more than a mere patent on the abstract idea of integrating product ordering, vendor order fulfillment and vendor advertising" or the abstract idea of "comparison shopping." For example, Applicant's claims recite a parts/product vendor advertisements selection process that determines which advertisement is best to display to a buyer. Applicant's claims look at available vendor advertisement options and at the context sensitivity of the advertisements before choosing between the context-sensitive advertisement and an alternate vendor advertisement. *The context sensitivity built into Applicant's claims is not a conventional or routine feature for advertisements*, especially when systems are typically built for static advertisements.

App. Br. 23 (emphasis added).

We find Appellant's analogy to *BASCOM* is unavailing. App. Br. 23–25. The Federal Circuit held in *BASCOM* that the claimed Internet content filtering, which featured an implementation "versatile enough that it could be adapted to many different users' preferences while also installed remotely in a single location," expressed an inventive concept in "the non-

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[10] *BASCOM*, 827 F.3d 1341.

conventional and non-generic arrangement of known, conventional pieces."
BASCOM, 827 F.3d at 1350.

Here, Appellant has not shown a non-conventional, non-generic
arrangement regarding the additional limitations of generic computer
components, as recited in each of independent claims 1, 21, and 41, which
include the generic "status screen," "communications network," and
databases. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

Therefore, it is our view that Appellant's claims do not involve any
improvements to another technology, technical field, or improvements to the
functioning of the computer or network, as was seen by the court in
BASCOM.

Berkheimer v. HP Inc., 881 F.3d 1360 (Fed. Cir. 2018)

We note *Berkheimer* was decided by the Federal Circuit on February
8, 2018. On April 19, 2018, the PTO issued the Memorandum titled:
"Changes in Examination Procedure Pertaining to Subject Matter Eligibility,
Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)"
(hereinafter "*Berkheimer* Memorandum").[11]

The *Berkheimer* Memorandum provided specific requirements for an
Examiner to support with evidence any finding that *claim elements* (or a
combination of elements) are well-understood, routine, or conventional.

In the Final Action, the Examiner finds:

> Applicant clearly indicates in FI[G]s 1 and 2 and in the
> background of the specification pages 1-8, that the claimed

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[11] Available at https://www.uspto.gov/sites/default/files/documents/memo-
berkheimer-20180419.PDF.

features are simply appended to the [I]nternet features above. Applicant's specification does not provide any disclosure that would suggest that these well understood [I]nternet features/functionalities are anything other than *well-understood routine and conventional features* that are simply appended to the abstract idea to generally link the idea to technological environment. Please also note that none of the steps 1-28 shown supra necessarily require a computer to perform the abstract idea, therefore, there is no identifiable inventive step.

Final Act. 7–8 (emphasis added).

Although the Supplemental Appeal Brief was filed on January 30, 2018, just over a week before *Berkheimer* was decided, Appellant cites to *Berkheimer* in the Reply Brief, filed May 23, 2018:

Such as provided with the recent Federal Circuit decision *Berkheimer v. HP, Inc.*, (Fed. Cir. Feb 8, 2018), "[w]hether a particular technology is *well-understood, routine, and conventional* goes beyond what was simply known in the prior art. The mere fact that something is disclosed in a piece of prior art, for example, does not mean it was *well-understood, routine, and conventional*." The combination of elements of the claimed invention, including the advertising aspects of the claimed invention, are not *well-understood, routine or convention*[*al*] because the state of the art at the time of filing involved separate advertising systems, instead of integrated advertising systems. The integration of advertising aspects into an e-commerce model is not *well known* that it does not need to be described in detail in a patent application. *While advertising and the e-commerce model are conventional, the specific combination of advertising and e-commerce as provided by the claimed invention is not commonly used in the relevant field.* It is the combination of the various aspects of the claimed invention and the steps performed by the claimed invention that allow the claimed invention to operate in *a non-conventional and non-generic way* to ensure that the buyer makes the most informed and efficient purchase while *the claimed invention reduces data redundancy and data handling*. So, even, if the

claimed invention is directed at an abstract idea, the claimed
invention comprises claim limitations that are "significantly
more" than the abstract idea.

Reply Br. 2–3 (emphasis added).

However, we find Appellant fails to substantively traverse, in the
Reply Brief (*id.*), the Examiner's specific findings regarding Figures 1 and 2
and pages 1–8 of the Specification:

> Applicant clearly indicates in **FI[G]s 1 and 2** and in the
> background of the **specification pages 1-8**, that the claimed
> features are simply appended to the [I]nternet features above.
> Applicant's specification does not provide any disclosure that
> would suggest that these well understood [I]nternet
> features/functionalities are anything other than *well-understood
> routine and conventional features* that are simply appended to
> the abstract idea to generally link the idea to technological
> environment.

Final Act. 7–8 (emphasis added).

Therefore, on this record, we are not persuaded the Examiner erred.

Further regarding the use of the recited generic "database[s]," "status
screen" and "communications network" (independent claims 1, 21, and 41),
the Supreme Court has held "the mere recitation of a generic computer
cannot transform a patent-ineligible abstract idea into a patent-eligible
invention." *Alice*, 573 U.S. at 223. Our reviewing court provides additional
guidance. *See FairWarning*, 839 F.3d at 1096 ("[T]he use of generic
computer elements like a microprocessor or user interface do not alone
transform an otherwise abstract idea into patent-eligible subject matter.");
OIP Techs., Inc. v. Amazon.com, Inc., 788 F.3d 1359, 1363 (Fed. Cir. 2015)
(claims reciting, *inter alia*, sending messages over a network, gathering
statistics, using a computerized system to automatically determine an

estimated outcome, and presenting offers to potential customers found to merely recite "'well-understood, routine conventional activit[ies],' either by requiring conventional computer activities or routine data-gathering steps" (alteration in original)).

This reasoning is applicable here. Therefore, on the record before us, Appellant has not shown that the claims on appeal add a specific limitation beyond the judicial exception that is not "well-understood, routine, and conventional" in the field (*see* MPEP § 2106.05(d)).

In light of the foregoing, we conclude, under the 2019 Revised Guidance, that each of Appellant's claims 1, 2, 21, 22, 41 and 42, considered as a whole, is *directed to a patent-ineligible abstract idea that is not integrated into a practical application, and does not include an inventive concept.* Accordingly, for the reasons discussed above, we sustain the Examiner's Rejection A under 35 U.S.C. § 101 of claims 1, 2, 21, 22, 41, and 42.[12]

Rejection B of Representative Independent Claim 1 under Pre-AIA 35 U.S.C. § 103(a)

<u>Issue</u>: Under 35 U.S.C. § 103(a), did the Examiner err by finding Scruton, Racco, and Ebert collectively teach or suggest the contested limitations L1 and L2:

> [L1] said part/product advertising subsystem is configured to periodically query the plurality of vendors for information regarding the plurality of parts/products and *update the vendor advertising database* and the local

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[12] To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

price/availability/delivery database *with the information regarding the plurality of parts and products;*

[L2] said *part/product advertising subsystem is configured to trigger a parts/product vendor advertisement selection process*, wherein the parts/products vendor advertisement selection process determines a selected advertisement from the *at least one context-sensitive vendor advertisement* and an alternate vendor advertisement, wherein the parts/product vendor advertisement selection process retrieves the selected advertisement from the vendor *advertising database*[,]

within the meaning of representative claim 1?[13] (Emphasis added). We note limitations L1 and L2 of claim 1 are recited in similar form having commensurate scope in remaining independent claims 21 and 41.

The Examiner's Findings

The Examiner finds Racco (¶ 110), in combination with Scruton and Ebert, teaches or suggests disputed limitation L1, the *vendor advertising database*. *See* Final Act. 12.

The Examiner finds Racco (¶¶ 389, 266), in combination with Scruton and Ebert, teaches or suggests disputed limitation L2, *the context-sensitive vendor advertisement selection*. *See* Final Act. 12–13.

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[13] *See supra*, n.7. (We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification).

Contested Limitation L1 of Independent Claim 1 under Rejection B

Appellant's Contentions

Regarding the § 103(a) rejection of claim 1, Appellant contends that Racco teaches advertisements on a webpage, and does not teach an "advertising database," as recited in claim 1. App. Br. 27.

However, Appellant's contentions are not persuasive. As further explained by the Examiner: "Scruton clearly teaches a database that maintains lists of supplier's parts being promoted in a database maintained by the inventory management system." Ans. 12 (citing Scruton, ¶ 217). The Examiner notes that Scruton does "not specifically mention the word 'advertising'" Ans. 12.

The Examiner explains the Racco reference was added "to show that having an advertising database was well understood in the art." *Id.* (citing Racco ¶ 110). The Examiner additionally cites to Racco (¶¶ 140, 265, 453, and 454) to show "the use of a local database to store promotions/listing advertisements in a database [that] are accessed and advertised on the intermediary from the database." Ans. 12–13.

Turning to the evidence, we find at least Racco (¶ 453) (in combination Scruton and Ebert) teaches or suggests the disputed L1 "advertising database" feature:

> As described above, A Product **Advertising** option 167 can be selected from the main sell menu as shown in FIG. 12 to allow sellers 14 or administrators of other websites or systems to integrate and/or promote their item listings from their website into the items **database 22** and the system 10. For example, ABC Company may have their own website but may want to use the intermediary 16 to promote their items and

generate more sales by listing all of their items in the
intermediary's 16 items **database 22**.

Racco ¶ 453.

Appellant attacks the teachings of the references in isolation and does

not specifically rebut the Examiner's ultimate legal conclusion of

obviousness which is based on the *combined* teachings and suggestions of

Scruton, Racco, and Elbert. *See In re Merck & Co., Inc.,* 800 F.2d 1091,

1097 (Fed. Cir. 1986). One cannot show nonobviousness by attacking

references individually where the rejections are based on combinations of

references. *Id.*

Moreover, the test for obviousness is not whether the claimed

invention is expressly suggested in any one or all of the references, but

whether the claimed subject matter would have been obvious to those of

ordinary skill in the art in light of the *combined teachings* of those

references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Because Appellant's arguments are directed to the references

individually, and not to the *combination* of the teachings, as applied by the

Examiner (*see* Ans. 12–13), on this record, we are not persuaded the

Examiner erred regarding disputed limitation L1. *See* Final Act. 11–12.

Contested Limitation L2 of Independent Claim 1 under Rejection B

> [L2] said *part/product advertising subsystem is
> configured to trigger a parts/product vendor advertisement
> selection process*, wherein the parts/products vendor
> advertisement selection process determines a selected
> advertisement from the at least one *context-sensitive vendor
> advertisement* and an alternate vendor advertisement, wherein
> the parts/product vendor advertisement selection process

retrieves the selected advertisement from the vendor *advertising database*;

Claim 1. *See* App. Br. 29–31.

Appellant argues "Racco teaches user-filtered product listings, not a context-sensitive vendor advertisement." App. Br. 29. In support, Appellant contends that "advertisements are not the same as product listings." and "it is inapposite to combine teachings for advertisements and products listings when Racco specifically keeps advertisements and product listings separate." (*See* Racco, Figure 44).

We find Appellant's arguments unavailing, particularly given that Appellant expressly states in another section of the Appeal Brief: "The product *advertising* feature as disclosed in Racco in paragraphs [0453] and [0454] is a feature for *integrating* the seller's *product listings* on the seller's third-party e-commerce system." App. Br. 33, ¶ 3.

We note Racco's paragraph 454 describes: "the system 10 allows sellers 12 and suppliers 520 to utilize the system's 10 selling tools to *list and sell their items* within the system 10, or, sell their items *on their own e-commerce systems using the Product Advertising tool* giving them unparalleled flexibility in how they want to do business."

Given these teachings, (*id*.), we find combining advertisements with product listings would be nothing more than a predictable result. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007) ("[A] combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

Regarding the recited "triggering" feature of limitation L2 of claim 1, the Examiner's findings are supported by a preponderance of the evidence:

> [See *Racco's*] Figure 8 where parts are advertised by an
> advertisement subsystem that is *triggered* by customized
> listings/advertisements that the seller creates to allow the
> system to *trigger t*he selection of conte[x]t sensitive listings that
> are related to the content (Rocco, para 0155). For example; in
> FIG 8 under a specific of category "Glass" when the user
> selects "door glass [(3),]" advertisements are presented to the
> user that were *triggered* by the system selection process.

Ans. 16 (emphasis added).

For at least the aforementioned reasons, on this record we are not persuaded of error regarding the Examiner's underlying factual findings and ultimate legal conclusion of obviousness for Rejection B of the disputed limitations L1 and L2 of independent representative claim 1. Accordingly, we sustain the Examiner's Rejection B of claim 1.

Rejection B of Independent Claims 21 and 41 under 35 U.S.C. § 103(a)

Appellant focuses on the *"tailored advertising"* language recited in independent claims 21 and 41. *See* App. Br. 33–34 (emphasis added).

Independent claim 21 recites, in pertinent part:

(2) determining *tailored advertising* between context-sensitive vendor advertising and alternate vendor advertising, wherein the context-sensitive vendor advertising is linked to a part/product on said customer order entry subsystem and wherein said tailored advertising is linked to at least one vendor of the second set of the plurality of vendors retrieved from the vendor database;

(emphasis added).

Remaining independent claim 41 recites identical language.

Issue: Under 35 U.S.C. § 103(a), did the Examiner err by finding Scruton, Racco and Ebert collectively teach or suggest the disputed claim limitation, "tailored advertising"?

The Examiner finds Racco (¶¶ 140, 265–266, and 453–454) teaches *tailored advertising*, in accordance with the supporting evidence relied upon in the Final Office Action 10–16.

Turning to the evidence, we agree with the Examiner that Racco teaches or suggests *tailored advertising*, i.e., *advertising* promoted in a desired way for specific target customers*:*

> Sellers 14 can also use their store front to attach *advertising pages*. In this way, the system 10 can restrict the amount of data that the sellers 14 can add to a listing (such as *advertisements*) while still providing space to **advertise and promote in any way they wish**. … The system 10 can use the *categorization database* 20 to perform a filtered query … For example, sellers 14 can create and distribute flyers to certain groups or types of users **for specific target marketing campaigns**.

Racco ¶¶ 265–266 (emphasis added).

We note there is no requirement in an obviousness analysis for the prior art to "contain a description of the subject matter of the appealed claim in *ipsissimis verbis*." *In re May*, 574 F.2d 1082, 1090 (CCPA 1978). Moreover, "the question under 35 USC 103 is not merely what the references expressly teach but what they would have *suggested* to one of ordinary skill in the art at the time the invention was made." *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (emphasis added) (quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)); *see also* MPEP § 2123.

This reasoning is applicable here. Thus, we find Racco teaches or suggests *tailored marketing/advertising* (¶¶ 265–266: "specific target marketing campaigns."), within the meaning of independent claims 21 and 41.

Accordingly, on this record, and based upon a preponderance of the evidence, we are not persuaded of error regarding the Examiner's underlying factual findings and ultimate legal conclusion of obviousness, as pertaining to the disputed "*tailored advertising*" limitation recited in remaining independent claims 21 and 41. (emphasis added). Accordingly, we sustain the Examiner's Rejection B of claims 21 and 41.

Rejection B under § 103(a) of Remaining Dependent Claims 2, 22, and 42

Appellant advances no arguments traversing the Examiner's Rejection B of dependent claims 2, 22, and 42. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Therefore, dependent claims 2, 22, and 42 fall with the respective independent claim 1, 21, or 41, from which they directly depend.

CONCLUSIONS

The Examiner did not err in rejecting claims 1, 2, 21, 22, 41, and 42 under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more.

The Examiner did not err in rejecting claims 1, 2, 21, 22, 41, and 42, as being obvious under 35 U.S.C. § 103.

DECISION

We affirm the Examiner's decision rejecting claims 1, 2, 21, 22, 41, and 42 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1, 2, 21, 22, 41, and 42 under 35 U.S.C. § 103.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED