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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HOWARD C. LERMAN, THOMAS C. DIXON, KEVIN  
CAFFREY, and DAVID C. LIN<sup>1</sup>

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Appeal 2018-006402  
Application 14/793,327  
Technology Center 2100

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Before ROBERT E. NAPPI, LARRY J. HUME and  
STEPHEN E. BELISLE, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 3 through 14, 16 through 20, 22 through 24, and 26. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). According to Appellant, Yext Inc. is the real party in interest. Appeal Br. 3.

## INVENTION

The invention relates generally to Internet search methods, and more particularly, to a method and system for selecting a single accurate listing and suppressing other duplicate listings on one or more listing provider systems from a single source system triggered by a user. Spec. ¶ 1. Claim 1 is reproduced below.

1. A method comprising:

receiving, by a processing device of a source system, a first indication to suppress one or more listings associated with an entity on one or more provider systems, wherein the first indication comprises first identification data of the entity and an indication that the first identification data of the entity is no longer valid;

retrieving, from a database associated with the processing device, a list of one or more provider systems associated with the processing device and having at least one listing corresponding to the entity; and

for each provider system in the list of one or more provider systems:

searching the provider system, by the processing device, for listings having identification data matching the identification data of the entity;

receiving, by the processing device from the provider system, one or more matching listings having second identification data matching the first identification data of the entity, wherein each listing of one or more matching listings has a corresponding provider-supplied external identifier;

transmitting, by the processing device to the provider system, a request to suppress the one or more matching listings from search results on at least one of the provider systems, the request to suppress the one or more matching listings comprising a list of the one or more corresponding provider-supplied external

identifiers to indicate the one or more matching listings to suppress, each matching listing of the one or more matching listings comprises a corresponding confidence score from the source system indicating that the matching listing is a designated duplicate listing, wherein at least one of the one or more matching listings having a lowest confidence score is to be suppressed; and

receiving, by the processing device, an acknowledgement to accept the request to suppress the one or more matching listings from the provider system, wherein the acknowledgement comprises a confirmation of at least one of the one or more remaining listings that is suppressed as a duplicate listing.

#### EXAMINER'S REJECTION<sup>2</sup>

The Examiner rejected claims 1, 3 through 14, 16 through 20, 22 through 24, and 26 under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. Final Act. 5–6.

#### ANALYSIS

We have reviewed Appellant's arguments in the Appeal Brief, the Examiner's rejections, and the Examiner's response to Appellant's arguments. Appellant's arguments have not persuaded us of error in the Examiner's rejection of all the claims under 35 U.S.C. § 101. Patent eligibility under § 101 is a question of law that may contain underlying issues of fact. "We review the [Examiner's] ultimate conclusion on patent eligibility de novo." *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1342 (Fed. Cir. 2018) (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365

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<sup>2</sup> Throughout this Decision we refer to the Appeal Brief filed January 3, 2018 ("Appeal Br."); Final Office Action mailed November 13, 2017 ("Final Act."); and the Examiner's Answer mailed April 5, 2018 ("Ans."). Appellant did not file a reply to the Examiner's Answer.

(Fed. Cir. 2018)); *see also* *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) (“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review de novo.”).

*35 U.S.C. § 101 Rejection*

PRINCIPLES OF LAW

Patent-eligible subject matter is defined in 35 U.S.C. § 101 of the Patent Act, which recites:

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.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in 35 U.S.C. § 101: “[l]aws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012).

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*, 573 U.S. at 217–18 (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.”); *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 rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (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.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The United States Patent and Trademark Office “USPTO” published revised guidance on the application of § 101. USPTO’s *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”). Under that guidance, we first determine whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.05(a)–(c), (e)–(h) (9<sup>th</sup> Ed., Rev. 08.2017, Jan. 2018)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

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

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

*See Memorandum.*

## DISCUSSION

The Examiner determines the claims are not patent eligible because they are directed to a judicial exception without reciting significantly more. Final Act. 5. Specifically, the Examiner determines the claims are directed to collecting and analyzing information, which is similar to concepts found abstract in *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) and *FairWarning IP, LLC v. Iatric Sys.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016). Final Act. 5. Further, the Examiner finds that the additional limitations of the claims recite generic computer components and functions that are well understood routine and conventional and thus do not amount to significantly more than the abstract idea. Final Act. 5–6.

### *The Judicial Exception*

Appellant argues the claims do not recite concepts similar to those at issue in *Electric Power Group* and *FairWarning*. Appeal Br. 11–12. Appellant states that the claims do recite analytic processing to suppress data, but argues the claims also recite more in the specific application of the analytical processing performed, citing the limitations of claim 1 directed to searching providers systems for matches, transmitting a request to suppress a match listing with confidence scores and receiving an acknowledgement to accept the request. Appeal Br. 11–12. Further, Appellant argues the claims at issue in *FairWarning*, which dealt with fraud and misuse detection, are unlike the current claims. Appeal Br. 12. Additionally, Appellant argues

the Examiner addressed the claims at a high level of abstraction and overgeneralized the claims which is improper. Appeal Br. 12–13 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)).

We are not persuaded of error by Appellant’s arguments and concur with the Examiner that representative claim 1 sets forth an abstract concept of collecting information, analyzing it, and displaying the results (a mental process).

Claim 1 recites computer implemented steps of receiving an indication to suppress a listing (a data gathering or observation element); retrieving a list of provider systems (a data gathering or observation element); for each provider, searching for listings having matching identification data (a data gathering or observation element); for each provider receiving the matching listings (an analysis, matching, and a communication of the result of the analysis); for each provider transmitting a request to suppress the matching listing where each matching listing has a confidence score (an analysis, the confidence score, and a communication of the result of the analysis); and receiving an acknowledgement to suppress the matching listing (a data gathering or observation element). We consider these limitations to recite an abstract mental process. These steps can be performed in the human mind as they are merely gathering data, analyzing the data, and communicating the results, a concept similar to that at issue in *Electric Power Group*. The claims at issue in *Electric Power Group* recited several steps of receiving data from various sources, detecting and analyzing the data, and displaying the data. *Elec. Power Grp.*, 830 F.3d at 1351–52. The court stated “we have treated collecting information, including when limited to particular content (which does not change its character as

information), as within the realm of abstract ideas.” *Id.* at 1353. Here the claims do not recite the content of the information by its subject, nor do they recite the source of the information with any particularity, indeed the Specification states that it can be from the Internet or a plurality of sources. *See Spec.* ¶ 2. Thus, we concur with the Examiner that the claims recite a concept of gathering data, analyzing the data, and displaying/communicating the data, which is similar to concepts found abstract by the courts such as in *Electric Power Group*. *See also Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057, 1067 (Fed. Cir. 2011) (claim to collecting and comparing known information determined to be steps that can be practically performed in the human mind); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“The concept of data collection, recognition, and storage is undisputedly well-known. Indeed, humans have always performed these functions.”); October 2019 Update: Subject Matter Eligibility 7 (discussing *Electric Power Group* and mental processes), available at [https://www.uspto.gov/sites/default/files/documents/peg\\_oct\\_2019\\_update.pdf](https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf). The fact that the data comes from users, databases, and content providers does not preclude a determination that the claim recites a mental process. *See, e.g., Voter Verified, Inc. v. Election Sys. & Software LLC*, 887 F.3d 1376, 1385 (Fed. Cir. 2018) (explaining that the claimed steps of voting, verifying the vote, and submitting the vote for tabulation are human cognitive actions that humans have performed for hundreds of years despite the fact that the steps in the claim were performed on a computer).

Thus, we are we are not persuaded that the Examiner erred by over generalizing the claim. As detailed above the claim recites numerous data

gathering, analysis, and communication steps and as such recites an abstract idea which is not unlike the abstract idea at issue in *Electric Power Group*. As such, we concur with the Examiner and consider representative claim 1 to recite an abstract concept.

*Integration of the Judicial Exception into a Practical Application*

The Examiner finds that the additional claim limitations do not recite an improvement to a technical field or a technology by improving the functioning of the computer itself or linking the use of the abstract idea to a particular technological environment. Final Act. 6.

Appellant argues that the claims are directed to improvements in efficiency of computer software performance which is sufficient to draw the claims to patent eligible subject matter. App Br. 13–14 (citing *Enfish*). Appellant argues that “claim 1 improves the performance of search engine technologies by suppressing duplicate listings on one or more listing provider systems from a single source system” and cites to paragraphs 6, 11, 18, 31, 38, 45 and 49 to support this assertion. Appeal Br. 14. Appellant asserts the “claimed solution addresses the problem of suppressing duplicate listings in search engine technologies caused by using web crawler applications.” Appeal Br. 14.

Further, Appellant asserts that “claim solution provides a particular useful application (for suppressing duplicate listings caused by web crawler applications on one or more listing provider systems) that is particular to computer search engines, which is analogous to the additional elements in *DDR Holdings*.” Appeal Br. 15. Additionally, Appellant argues that the representative claim 1 of the present application is similar to the claims at

issue in *McRO* in that it offers an improvement in search engine technology and recites a specific set of ordered rules, e.g., suppression rules. Appeal Br. 16–18 (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)).

We are not persuaded of error by Appellant’s arguments. As discussed above, we concur with the Examiner that representative claim 1 recites an abstract idea. Further, we do not consider that the claim integrates the abstract idea into a practical application because we do not find that the claim recites an improvement to the functioning of the computer or other technology or otherwise tied to technology.

We are not persuaded of error by Appellant’s argument, which relies upon *Enfish*, *DDR*, and *McRO*, and which asserts the claim is directed to improving computer technology or other technology. In *DDR Holdings*, the claimed invention created a hybrid web page that combined advantageous elements from two web pages, bypassing the expected manner of sending a visitor to another party’s web page, in order to solve the internet-centric problem of retaining website visitors. *DDR Holdings*, 773 F.3d at 1257–59. The *Enfish* court found “the plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Enfish*, 822 F.3d at 1336. Here, we do not find that Appellant’s arguments directed to the claims improving a computer technology or that the claims solve a problem particular to computer search engines (Internet centric problem) are commensurate with the scope of representative claim 1. While, Appellant’s Specification identifies that the invention is directed to the de-duplication of web content and duplication can be caused by the nature of web crawlers, the claim does

not recite the Internet or web providers as the source providers for which the suppression (de-duplicating) of data is performed. Spec. ¶¶ 6, 11. As such, representative claim 1 is not limited to improving a web or Internet centric technology as in *DDR*, but rather is applicable to any situation where there are plural sources of information which may be duplicative (e.g. data produced as part of litigation discovery, or part of a FOIA request). Further, the claims do not recite limitations directed to actually suppressing the matching data, but rather requesting the data to be suppressed. Thus, the improvement discussed in Appellant’s Specification, the suppression of duplicate data, is not actually claimed.

Additionally, we note that the Specification does not identify that the method changes the operation of a computer to improve the function of the computer, but rather only improves the data provided for “selecting a single accurate listing and suppressing other duplicate listings.”. *Id.* ¶ 1. Thus, the representative claim, when interpreted in light of the Specification, merely recites use of a computer as a tool to implement a concept of collecting information, analyzing it, and displaying the results, a mental process (an abstract idea). *See, e.g., RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Unlike *Enfish*, [the claim] does not claim a software method that improves the functioning of a computer . . . [but] claims a ‘process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.’”) (citation omitted)).

Further, we are not persuaded that the claimed application of rules based upon identified features recites significantly more and draws the claim to patent eligible subject matter. In *McRO*, the court reviewed claims which use “a combined order of specific rules that renders information into a

specific format that is then used and applied to create desired results: a sequence of synchronized, animated characters.” *McRO*, 837 F.3d at 1315. The court found that the claims did not “simply use a computer as a tool to automate conventional activity,” but instead used the computer to “perform a distinct process” that is carried out in a different way than the prior non-computer method to improve the technology of (3-D animation techniques). *See McRO*, 837 F.3d at 1314–16. Here, as discussed above, claim 1 recites several steps of gathering data and analysis steps of matching data and a confidence score associated with the data matching. The claim does not recite any specific rules or steps used to determine the match or how the confidence score is generated. Thus, the claim generically recites analysis but does not recite rules and there is no evidence that the claim performs a distinct process that is carried out in a different way than the prior non-computer method.

As such, we are not persuaded of error in the Examiner’s rejection by Appellant’s argument that the claim improves a computer technology or other technology, and we do not consider representative claim 1 to recite a practical application of the abstract concept.

*Significantly More than the Abstract Idea*

Under the Memorandum, 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.

Representative claim 1 recites the additional elements of a processing device and a database. Appellant's Specification describes a processing device as a computer in general terms including any of plural generic processing devices. Spec. ¶ 77. Similarly, Appellant's Specification discusses the use of a database in a conventional manner as storing data. Spec. ¶ 4. As such, the recitation of receiving data from a database and receiving data from a processing device are recitations of well-understood, routine, conventional activities. *See* MPEP § 2106.05(d) II (iv).

Thus, we concur with the Examiner that the additional elements recite well known elements.

In summary, Appellant's arguments have not persuaded us of error in the Examiner's determination that representative claim 1 recites an abstract idea; a method of collecting/gathering information, analyzing it, and displaying the results (mental processes). Further, Appellant's arguments have not persuaded us that the Examiner erred in finding that the claim is not: directed to an improvement in the functioning of the computer or to other technology or other technical field; directed to a particular machine; directed to performing or affecting a transformation of an article to a different state or thing; or directed to using a judicial exception in some meaningful way beyond linking the exception to a particular technological environment, such that the claim as a whole is more than a drafting effort to monopolize the judicial exception. For these reasons, we are unpersuaded that the claim recites additional elements that integrate the judicial exception into a practical application nor do the claims add a specific limitation

beyond the judicial exception that is not “well-understood, routine, conventional. *See* Memorandum, 84 Fed. Reg. at 54. Accordingly, we sustain the Examiner’s rejection of claim 1, and claims 3 through 14, 16 through 20, 22 through 24, and 26 grouped with claim 1, under 35 U.S.C. § 101 as being directed to a patent-ineligible abstract idea, that is not integrated into a practical application, and does not include an inventive concept.

### CONCLUSION

We affirm the Examiner’s rejection of claims 1, 3 through 14, 16 through 20, 22 through 24, and 26, under 35 U.S.C. § 101.

In summary:

<b>Claim Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/ Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 3–14, 16–20, 22–24, 26	101	Eligibility	1, 3–14, 16–20, 22–24, 26	

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

**AFFIRMED**