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Stephen M. De Klerk
MatterLight IP
2033 Gateway Place
5th Floor
San Jose, CA 95110

| EXAMINER | |
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| POUNCIL, DARNELL A | |

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ariana@matterlightip.com
stephen@matterlightip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ADAM LEE and AMIT GAUR[1]

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Appeal 2018-008244
Application 13/470,097
Technology Center 3600

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Before CARL W. WHITEHEAD JR., JAMES B. ARPIN, and ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants are appealing the final rejection of claims 1–10, 16–26 and 32 under 35 U.S.C. § 134(a). Appeal Brief 13. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

*Introduction*

The invention is directed to a "transactions network and to a method and system for managing electronic transactions." Specification ¶ 1.

[1] Appellants identify Boku, Inc., as the real party-in-interest. Appeal Brief 3.

*Representative Claim*

1. A server computer system for combining data and then bidding on said data, comprising:

a processor;

a computer-readable medium connected to the processor;

a network interface device connected to the processor; and

a set of instructions on the computer-readable medium, the set of instructions being executable by the processor and including:

a data store;

transaction data of consumers stored in the data store;

a plurality of merchant accounts stored in the data store, each merchant account having a merchant account identifier;

a merchant account management system receiving an offer entry over the network interface device from each of a plurality of merchant computer systems, the merchant offer being stored in the data store in association with the merchant account having the respective merchant account identifier;

a plurality of consumer accounts stored in the data store, each consumer account having a respective consumer account identifier;

a consumer account identifier push module transmitting the consumer account identifier of the consumer account via a network interface device to a network computer system;

a transaction data retrieval module retrieving transaction data from the network computer system, the transaction data that is received from the network computer system including the consumer account identifier and being received due to transmission of the consumer account identifier via a network interface device to the network computer system;

a consumer account setup module receiving preferences and details from a consumer computer system and storing the preferences and details in the consumer account having the consumer account identifier;

a mapping module storing the transaction details received from the network computer system in the consumer account having the consumer account identifier at the server computer system;

a consumer profile building module building a consumer profile for the consumer account having the consumer account identifier based on the transactions stored in the consumer account having the consumer account identifier and the preferences and details of the consumer account having the consumer account identifier;

a bulk transaction data retrieval module receiving bulk transaction data from the network computer system including transaction data that is not associated with any consumer account identifier transmitted from the server computer system to the network computer system; and

a bulk profile building module building a bulk profile utilizing the bulk transaction data including the transaction data that is not associated with any consumer account identifier retrieved from the network computer system;

a target profile attribute system, the consumer profile for the consumer account having the consumer account identifier being fed into the target profile attribute system and the bulk profile including the transaction data that is not associated with any consumer account identifier being fed into the target profile attribute system;

a campaign management system transmitting at least a representation of the transaction data based on a combination of the preferences and details of the consumer profile for the consumer account having the consumer account identifier and the bulk profile including the transaction data that is not associated with any consumer account identifier in the target profile attribute system over the network interface device to each of a plurality of the merchant computer systems, receiving a bid from each of a plurality of the merchant computer systems for the transaction data, comparing the bids, and associating an activation level of at least one of the offer entries based on the comparison of the bids; and

an offer push module transmitting the offer entry over the network interface device to at least one consumer device, the transmission of the offer entry being dependent on the activation level of the offer entry.

*Rejections on Appeal*

Claims 1–10, 16–26 and 32 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent ineligible subject matter. Final Action 2–7.

Claims 1–10, 16–26 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlson (US Patent Application Publication 2010/0274625 A1; published October 28, 2010), Zollino (US Patent Application Publication 2008/0086365 A1; published April 10, 2008) and

Purvis (US Patent Application Publication 2013/0013502 A1; published January 10, 2013. Final Action 7–15.

ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed January 23, 2018), the Final Action (mailed November 30, 2017) and the Answer (mailed May 18, 2018), for the respective details.

35 U.S.C. § 101 Rejection

The Examiner determines, "Claims 1–10, 16–26 and 32 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., an abstract idea) without 'significantly more.'" Final Action 2; *see Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (describing the two-step framework "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.").

After the mailing of the Answer and the filing of the Briefs in this case, the USPTO published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (January 7, 2019) (hereinafter "Memorandum"). Under the Memorandum, the Office first looks to whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., (a) mathematical concepts, (b) certain methods of organizing human activity such as a fundamental economic principles and practice, commercial or legal interactions, managing personal behavior, relationships, interpersonal interactions, (c) mental processes; and

> (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. 2018).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office 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.

Appellants contend, "the claims at issue are not directed to an abstract idea within the meaning of Alice. Rather, they are directed to a specific improvement to the way computers operate, embodied in **consumer preferences combined with non-consumer bulk data profiles for target profiling and distribution to merchants for bidding**." Appeal Brief 20–21.

Appellants' argument is not persuasive. Instead, we agree with the Examiner's determination that the claims are directed to an abstract idea. Final Action 2.

*Alice/Mayo—Step 1 (Abstract Idea)*
*Step 2A–Prongs 1 and 2 identified in the Revised Guidance*

Step 2A, Prong One

The Specification discloses, "[T]he invention provides a server computer system for managing electronic transactions, including a processor, a computer-readable medium connected to the processor, a

network interface device connected to the processor and a set of instructions on the computer-readable medium, the set of instructions being executable by the processor." Specification ¶ 4.

Claim 1 recites a "server computer system for combining data and then bidding on said data" wherein:

1. a merchant account management system receiving an offer entry over the network interface device from each of a plurality of merchant computer systems, the merchant offer being stored in the data store in association with the merchant account having the respective merchant account identifier;

2. a transaction data retrieval module retrieving transaction data from the network computer system, the transaction data that is received from the network computer system including the consumer account identifier and being received due to transmission of the consumer account identifier via a network interface device to the network computer system;

3. a consumer profile building module building a consumer profile for the consumer account having the consumer account identifier based on the transactions stored in the consumer account having the consumer account identifier and the preferences and details of the consumer account having the consumer account identifier;

4. a target profile attribute system, the consumer profile for the consumer account having the consumer account identifier being fed into the target profile attribute system and the bulk profile including the transaction data that is not associated with any consumer account identifier being fed into the target profile attribute system;

5. receiving a bid from each of a plurality of the merchant computer systems for the transaction data, comparing the bids, and associating an

activation level of at least one of the offer entries based on the comparison of the bids; and

6. an offer push module transmitting the offer entry over the network interface device to at least one consumer device, the transmission of the offer entry being dependent on the activation level of the offer entry.

These steps comprise fundamental economic principles or practices and/or commercial or legal interactions; thus, the claim recites the abstract idea of "certain methods of organizing human activity," such as advertising, marketing, and sales activities. *See* Memorandum, Section I (Groupings of Abstract Ideas); *see also* Specification ¶ ¶4-5; *OIP Techs., Inc. v. Amazon.com, Inc.,* 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (concluding that claimed concept of "offer-based price optimization" is an abstract idea "similar to other 'fundamental economic concepts' found to be abstract ideas by the Supreme Court and this court"); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014) (holding that claim "describe[ing] only the abstract idea of showing an advertisement before delivering free content" is patent ineligible).

Therefore, we conclude the claims recite an abstract idea pursuant to Step 2A, Prong One of the guidance. *See* Memorandum, Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception).

Step 2A, Prong Two

Under Prong Two of the Revised Guidance, we must determine "whether the claim as a whole integrates the recited judicial exception into a practical application of the exception." It is noted that a "claim that integrates a judicial exception into a practical application will apply, rely on, or use 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." Memorandum, Section III(A)(2).

Appellants contend, "[T]he 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." Appeal Brief 20. Appellants argues, "[T]he claims at issue are not directed to an abstract idea within the meaning of Alice. Rather, they are directed to a specific improvement to the way computers operate, embodied in **consumer preferences combined with non-consumer bulk data profiles for target profiling and distribution to merchants for bidding**." Appeal Brief 20–21. Appellants further contends, "[T]he claims are directed to an improvement of an existing technology is bolstered by the specification's teachings that the claimed invention achieves other benefits over conventional systems, such as **consumer preferences combined with non-consumer bulk data profiles for target profiling and distribution to merchants for bidding**." Appeal Brief 24.

In *McRO*[2], the Federal Circuit concluded that the claim, when considered as a whole, was directed to a "technological improvement over the existing, manual 3-D animation techniques" through the "use [of] limited rules . . . specifically designed to achieve an improved technological result in conventional industry practice." *McRO*, 837 F.3d at 1316.

Specifically, the Federal Circuit found that the claimed rules allowed computers to produce accurate and realistic lip synchronization and facial

[2] *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1303 (Fed. Cir. 2016).

expressions in animated characters that previously could only be produced by human animators; and the rules were limiting because they defined morph weight sets as a function of phoneme sub-sequences. *McRO*, 837 F.3d at 1313.

We do not find Appellants' arguments persuasive. We find no evidence of record here that the present situation is like the one in *McRO* where computers had been unable to make certain subjective determinations, e.g., regarding morph weight and phoneme timings, which could only be made prior to the claimed invention by human animators. The Background section of one of the patents at issue in *McRO*, Rosenfeld (US Patent 6,307,576 B1; issued Oct. 23, 2001), includes a description of the admitted prior art method and the shortcomings associated with that prior method. *See McRO*, 837 F.3d at 1303–06. There is no comparable discussion in Appellants' Specification or elsewhere of record.

In addition, we find Appellants' claims are distinguished from those claims that our reviewing court has found to be patent eligible by virtue of reciting technological improvements to a computer system. *See, e.g.*, *DDR Holdings*, 773 F.3d at 1249, 1257 (holding that claims reciting computer processor for serving "composite web page" were patent eligible because "the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks"); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259 (Fed. Cir. 2017) (holding that claims directed to "an improved computer memory system" having many benefits were patent eligible).

The recited limitations do not reflect an improvement in the functioning of a computer or other technology or technical field. *See* Memorandum, 84 Fed. Reg. at 55; *cf. Trading Techs. Int'l, Inc. v. IBG LLC*,

No. 2017-2257, 2019 WL 1716242, at *3 (Fed. Cir. Apr. 18, 2019) ("This invention makes the trader faster and more efficient, not the computer. This is not a technical solution to a technical problem."). Further, we do not find Appellants' arguments persuasive because the claims utilize general purpose hardware (processor, computer readable medium, network interface device and networking) as a tool to market, advertise and manage electronic transactions. *See* Specification ¶ ¶ 4–5; *see also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) ("[W]e find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea . . . the focus of the claims is on the specific asserted improvement in computer capabilities (i.e., the self-referential table for a computer database) or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool.").

Subsequently, we detect no additional element (or combination of elements) recited in Appellants' representative claim 1 that integrates the judicial exception into a practical application. *See* Memorandum, Section III(A)(2). For example, Appellants' claimed additional elements (e.g., processor, computer readable medium and network interface device) do not: (1) improve the functioning of a computer or other technology; (2) are not applied with any particular machine (except for generic hardware); (3) do not effect a transformation of a particular article to a different state; and (4) are not applied in any 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(a)–(c), (e)–(h).

Accordingly, we determine the claim does not integrate the recited judicial exception into a practical application. *See* Memorandum, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application).

*Alice/Mayo—Step 2 (Inventive Concept)*
*Step 2B identified in the Revised Guidance*

Step 2B

Next, we determine whether the claim includes additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept. *Alice*, 573 U.S. at 217–18 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

We find the claim does not include a specific limitation or a combination of elements that amounts to significantly more than the judicial exception itself. *See* Memorandum, Section III(B)(Step 2B: If the Claim Is Directed to a Judicial Exception, Evaluate Whether the Claim Provides an Inventive Concept); *see also Aatrix Software, Inc. v. Green Shades Software, Inc*., 890 F.3d 1354, 1359 (Fed. Cir. 2018) ("the 'inventive concept' cannot be the abstract idea itself"). Other than the abstract idea itself, the remaining claim elements only recite generic computer components that are well-understood, routine, and conventional. *See* Final Action 2, 5–7; Specification ¶ ¶ 4–5; *Alice*, 573 U.S. at 226.

Accordingly, we conclude claims 1–20 are directed to a fundamental economic practice, which is one of certain methods of organizing human activity identified in the Memorandum and thus an abstract idea. Further, the claims do not recite limitations that amount to significantly more than

the abstract idea itself. We sustain the Examiner's 35 U.S.C. § 101 rejection of claims 1–10, 16–26 and 32.

35 U.S.C. § 103 Rejection

Appellants argue that Purvis fails to address the noted deficiency of the Carlson/Zollino combination as set forth by the Examiner. Appeal Brief 36; *see* Final Action 12.

Appellants argue:

> Purvis thus fails to teach or suggest the same limitations that are absent from Carlson and Zollino, namely that preferences and details for the consumer profile for the consumer account having the consumer account identifier can be combined with a bulk profile including the transaction data that is not associated with any consumer account identifier for purposes of a campaign management system as claimed.

Appeal Brief 37.

Appellants' Specification discloses:

> The bulk transaction data push module 506 initially transmits details of all the transactions in the transaction details data store 504 to the server computer system 12. The only data that is removed are the PANs that are used for the respective transactions. As such, at 512, the bulk transaction data push module 506 transmits bulk data including the time, amount, merchant account ID and location of each transaction to the server computer system 12.

Specification ¶ 60.

The Examiner relies[3] upon Zollino to disclose claim 1's limitation of "a bulk transaction data retrieval module receiving bulk transaction data from the network computer system including transaction data that is not

[3] *See* Final Action 11.

associated with any consumer account identifier transmitted" wherein Zollino ¶ 56 discloses:

> The bulk transaction data file may comprise the transaction records of the complete (or of a predetermined time period) history of each of a plurality of customers' card swipes for a multiplicity of customers, and will typically contain such data fields as merchant name, merchant ID code (i.e. a unique code that enables a debit or credit card transaction to be properly credited to a particular merchant), store number (if available), industry code (e.g., merchant customer code (MCC), North American industry classification system (NAIC) codes, or the like), merchant address (city or DMA code, state, zip code), date of transaction and dollars spent, and preferably anonymous identifying information for the customer to whom each transaction relates.

The Examiner finds, "[T]he reference of Purvis discloses at [00021] a combination of preferences and details." Answer 9. Purvis discloses:

> Account information **54** represents any information regarding user and/or commercial accounts handled by financial institution device **14.** For example, account information **54** includes account numbers, nicknames for accounts, account identifiers associated with an account, balance information of an account, limits of an account, disclaimers associated with an account, customer preferences, any other suitable data, or any suitable combination of the preceding.

Purvis ¶ 21.

We do not find Appellants' arguments persuasive. "As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). We agree with the Examiner's findings that the combined teachings of Carlson, Zollino, and Purvis discloses the recited systems and

methods because the disputed limitation only requires transmitting a combination of various data content associated with electronic transactions in which the cited references discloses. *See* Final Action 11–12. Accordingly, we sustain the Examiner's obviousness rejection of claim 1, as well as, independent claim 17 and dependent claims 2–10, 16, 18–26 and 32 not argued separately with distinction. *See* Appeal Brief 38.

## DECISION

The Examiner's patent ineligible subject matter rejection of claims 1–10, 16–26 and 32 is affirmed.

The Examiner's obviousness rejection of claims 1–10, 16–26 and 32 is affirmed.

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

AFFIRMED