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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL LINCOLN ALBL, DAVID C. JELLISON JR., and
NIGEL ATTWELL

Appeal 2018-009036
Application 15/333,383
Technology Center 2100

Before DAVID C. MCKONE, JOHN P. PINKERTON, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

MCKONE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–20. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as iHeartMedia Management Services, Inc. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The invention is directed to analyzing content currently being (or that has recently been) provided to consumers and presenting to the consumers triggered content as a result. Spec. 5:8–12.

For example, an advertiser can place an advertising buy for a terrestrial, online, or mobile media provider, such as a radio station, and request ads to be run adjacent to, or within a certain time period prior to or after, an ‘ad song’ is played. An automated media scheduling system can evaluate a media programming log to determine if the ad-song is scheduled to be played within a proximity threshold of a commercial set.

Id. at 5:13–17. “Identifying triggering content can include inspecting or evaluating a media programming log, which identifies media content and the time the media content is scheduled to be broadcast, aired, or otherwise played out.” *Id.* at 9:9–11. In another example,

[p]hrases, images, or other content obtained as a result of the monitoring can be compared to a collection of pre-determined phrases or images, and the results of the comparison can be used to determine whether or not a topic of interest is being discussed, or whether an event of interest has occurred.

Id. at 9:23–26. The Specification describes detecting triggering content on one media platform (e.g., a terrestrial radio broadcast) and delivering triggered content on another media platform (e.g., a website). *Id.* at 12:18–24.

The Specification expressly defines certain terms used in the claims. For example, “the term ‘triggered content’ refers generally to content scheduled by an automated media scheduler for delivery to a consumer in response to detection of triggering content.” *Id.* at 6:8–10. Examples include an advertisement including a portion of an ad-song and a media item

including commercial content associated with a particular song or video item. *Id.* at 6:10–12.

“Triggering content,” as that term is used [in the Specification], refers to media content that causes, or triggers, an automated media scheduling system to attempt to schedule or modify a pre-existing schedule by adding or removing media content from the schedule, replacing scheduled media content with other media content, changing a scheduled frequency of scheduled media playout, or recording the triggering content to create or modify media content to be inserted into a media schedule.

Id. at 6:17–22.

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

1. A method for use in an automated media scheduling system, the method comprising:

maintaining information associating a plurality of different content triggers with a plurality of different content adjustment parameters, the plurality of different content adjustment parameters including information specifying a particular media channel to be used to deliver triggered content, by executing a program instruction in a data processing apparatus;

monitoring media content played out across a plurality of different media platforms for a content trigger, by executing a program instruction in a data processing apparatus; and

in response to detecting a particular content trigger associated with a particular media platform, adjusting playout of scheduled media content on the particular media channel to include the triggered content based on a particular content adjustment parameter associated with the particular content trigger, by executing a program instruction in a data processing apparatus.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Konig	US 2004/0194130 A1	Sept. 30, 2004
Hartmaier	US 2008/0293393 A1	Nov. 27, 2008
Bouazizi	US 2011/0010737 A1	Jan. 13, 2011
Singer	US 2011/0041062 A1	Feb. 17, 2011
Furney	US 8,341,047 B1	Dec. 25, 2012

REJECTIONS

Claims 1–20 are rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 2–5.

Claims 1, 5, 7, 8, 12, 14, 15, 18, and 20 are rejected under 35 U.S.C. § 102(a)(2) as being anticipated by Bouazizi. *Id.* at 6–8.

Claims 2, 9, and 16 are rejected under 35 U.S.C. § 103 as being unpatentable over Bouazizi and Konig. *Id.* at 8–9.

Claims 3 and 10 are rejected under 35 U.S.C. § 103 as being unpatentable over Bouazizi, Konig, and Singer. *Id.* at 9–11.

Claims 4, 11, and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over Bouazizi and Furney. *Id.* at 11–12.

Claims 6, 13, and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Bouazizi and Hartmaier. *Id.* at 12.

OPINION

Statutory Subject Matter Rejection Under § 101

Principles of Law

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 § 101 to include implicit

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exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Alice* and *Mayo*. *See id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *Id.* 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.”).

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.*

The PTO has published revised guidance on the application of § 101. *See USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance*, 84

Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”).² Under that guidance, we first look to 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 a mental process); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h) (9th 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 Guidance, 84 Fed. Reg. at 56.

The Examiner’s Rejection

The Examiner rejects independent claims 1, 8, and 15 together, finding that the features of those claims “correspond to concepts identified as abstract ideas by the courts, such as delivering user-selected media content to portable devices.” Final Act. 3 (citing *Affinity Labs of Tex. v.*

² We note that the Guidance was not available to the Examiner and Appellant during the prosecution of the instant Application.

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Amazon.com, Inc., 838 F.3d 1266 (Fed. Cir. 2016)). According to the Examiner, “[a]ll of these concepts relate to organizing and sending information resulting from the organization of information.” *Id.*

The Examiner further finds that “the limitations of the current claims are performed by the generically recited computer/processor,” and that “[t]he limitations are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.” *Id.* at 3–4. The Examiner finds that these additional limitations are not sufficient to amount to significantly more than the judicial exception, whether considered individually or as an ordered combination. *Id.* at 4. Specifically, the Examiner finds, “[t]he use of generic computer components to select and insert media content does not impose any meaningful limit on the computer implementation of the abstract idea,” and “[t]here is no indication that the combination of elements improves the functioning of a computer or improves any other technology.” *Id.* Rather, “[t]heir collective functions merely provide conventional computer implementation.” *Id.*

Judicial Exception (Step 2A,³ Prong 1)

The Examiner and Appellant address independent claims 1, 8, and 15 together. Final Act. 3–4; Appeal Br. 10–13. Appellant does not address the

³ The Guidance refers to “Step One” as determining whether the claimed subject matter falls within the four statutory categories identified by 35 U.S.C. § 101: process, machine, manufacture, or composition of matter. This step is not at issue here, as Appellant’s claims recite methods (processes), systems (machines), and computer readable media (articles of manufacture).

dependent claims separately. Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Viewing the Examiner’s rejection through the lens of the Guidance, we first consider whether the claim recites a judicial exception. Guidance, 84 Fed. Reg. at 51. The USPTO has synthesized the key concepts identified by the courts as abstract ideas into three primary subject-matter groupings: mathematical concepts, certain methods of organizing human activity (e.g., a fundamental economic practice), and mental processes. *Id.* at 52. As explained below, the claims recite certain methods of organizing human activity (commercial or legal interactions, including advertising, marketing, or sales activities or behaviors) and mental processes, which are identified by the Guidance as abstract ideas. *Id.*

Claim 1, in essence, recites maintaining information that associates content triggers with content adjustment parameters (including information specifying a particular media channel to be used to deliver triggered content); monitoring media content played out across a plurality of different media platforms for a content trigger; and, in response to detecting a content trigger associated with a media platform, adjusting the playout of scheduled media content on the specified media channel to include the triggered content based on one of the content adjustment parameters. The Specification makes clear that the invention relates to choosing advertisements triggered by content relevant to an advertiser and inserting those triggered advertisements into a media channel. “For example, an advertiser can place an advertising buy for a terrestrial, online, or mobile media provider, such as a radio station, and request ads to be run adjacent to, or within a certain time period prior to or after, an ‘ad song’ is played.” Spec. 5:13–15. Dependent claims further highlight that the claims are

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related to advertising and marketing. *See, e.g.*, claims 2 (“specific media content item associated both with the particular topic and a particular advertiser”), and 3 (“replacing a general advertisement associated with an advertiser with an ad-song advertisement associated with the advertiser”).

The Federal Circuit has found similar claims directed to advertising to be ineligible. *See, e.g., Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (“The process of receiving copyrighted media, selecting an ad, offering the media in exchange for watching the selected ad, displaying the ad, allowing the consumer access to the media, and receiving payment from the sponsor of the ad all describe an abstract idea, devoid of a concrete or tangible application.”); *see also Affinity Labs*, 838 F.3d at 1269 (“The idea in this case is even broader and more abstract than the idea in *Ultramercial*: The ’085 patent covers streaming content generally, not even including an additional feature such as exchanging the consumer’s access to the streaming content for the consumer’s viewing of an advertisement.”). We find that claim 1 recites advertising, marketing, or sales activities or behaviors, an example of commercial interactions that the Guidance lists as a certain method of organizing human activity that is an abstract idea. Guidance, 84 Fed. Reg. at 52.

Moreover, the steps of claim 1 could be performed by a user in his or her head, but for claim 1’s recitations of generic computer hardware and instructions. For example, a user could listen to a terrestrial radio broadcast or view a website (plurality of different media platforms) for an ad-song (an example of a content trigger/triggering content provided by the Specification, 6:22–24, 7:3–6), and, in response to hearing the ad-song, choose an advertisement related to the ad-song (an example of triggered content provided by the Specification, 6:10–11, 7:8–9) to be added to a

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media channel. Here, the claimed information associating content triggers with content adjustment parameters can be held in the user’s memory. Thus, claim 1 recites concepts that can be performed in the human mind (observation, evaluation, judgement), an example of a mental process. *See Elec. Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“[W]e have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.”). The Guidance lists a mental process as another example of an abstract idea. Guidance, 84 Fed. Reg. at 52.

Appellant argues that the Examiner has not considered the claims’ “character as a whole” and that the claims actually are directed to an improvement in media scheduling systems. Appeal Br. 10–11 (quoting *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016); citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)). We address these arguments in our analyses of Step 2A, Prong 2, and Step 2B, below.

Accordingly, we find that claim 1 recites abstract ideas, namely a certain method of organizing human activity (commercial interactions, specifically advertising, marketing or sales activities or behaviors) and a mental process. For the same reasons, claims 2–20 recite abstract ideas.

“Directed to” the Judicial Exception (Step 2A, Prong 2)

Because the claims recite an abstract idea, we now proceed to determine whether the recited judicial exception is integrated into a practical application. *See* Guidance, 84 Fed. Reg. at 51. Specifically, we look to “whether the claim recites additional elements that integrate the exception

into a practical application of that exception.” *Id.* at 54. Limitations that are indicative of integration into a practical application include additional elements that reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field. *Id.* at 55. When a claim recites a judicial exception and fails to integrate the exception into a practical application, the claim is “directed to” the judicial exception. *Id.* at 51.

The Examiner analyzes the remaining limitations of claim 1 and finds that “the claims do not recite an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.” Final Act. 3. Specifically, the Examiner finds that “the limitations of the current claims are performed by the generically recited computer/processor,” and that “[t]he use of generic computer components to select and insert media content does not impose any meaningful limit on the computer implementation of the abstract idea.” *Id.* at 3–4. As to the claim as a whole, the Examiner finds that “[t]here is no indication that the combination of elements improves the functioning of a computer or improves any other technology.” *Id.* at 4.

Appellant contends that the claims are not directed to recitations such as “maintaining information,” “monitoring media content,” and “adjusting playout of scheduled media content” unless “the character of the claim as a whole indicates” that the recitation “is the claimed advance over the prior art.” Appeal Br. 10 (quoting *Enfish*, 822 F.3d at 1335 (which, in turn, quotes *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1375, (Fed. Cir. 2016))). In *Enfish*, the Federal Circuit explained that “the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific

asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” 822 F.3d at 1335–36. The disputed claims in *Enfish* were patent-eligible because they were “directed to a specific improvement to the way computers operate, embodied in [a] self-referential table.” *Id.* at 1336.

Appellant argues that “the claims are actually directed to an improvement in media scheduling systems. Perhaps not an improvement in processing speed or power usage of the media scheduling system’s hardware, but an improvement in the capabilities of the media scheduling system.” Appeal Br. 11. According to Appellant, the “claimed invention improves conventional media scheduling systems by giving them the ability to deliver triggered content on different media channels.” *Id.* Appellant contends that this is “a specific technical improvement in the functionality of existing media scheduling systems.” *Id.* (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (2016)).

We are not persuaded by Appellant’s arguments. As the Examiner finds, “the claim[ed] invention fails to provide for a plurality of different media channels. Rather, the claimed invention simply recites features directed to ‘adjusting playout of scheduled media content on the particular media channel.’” Ans. 6. In replying to the Examiner’s findings on anticipation (which we address more fully below), Appellant “acknowledges that there is not [a] separate ‘selecting a channel’ element explicitly recited in the claims,” but argues that “the claims do require that the playout of scheduled media is adjusted based on the particular media channel associated with the triggering content.” Reply 8. We disagree. Claim 1 recites a “plurality of different content adjustment parameters including information specifying a particular media channel to be used to deliver

triggered content,” but does not recite that the parameter specifying a particular media channel is the “particular content adjustment parameter” on which the inclusion of the triggered content is based. According to the plain language of claim 1, it could be another content adjustment parameter of the recited plurality of parameters. Thus, claim 1 does not recite the improvement argued by Appellant.

More broadly, we agree with the Examiner that claim 1 merely recites abstract ideas implemented on generic computer hardware, with generic programming instructions. Unlike the claimed invention in *McRO*, for example, that improved how a physical display operated to produce better quality images, the claimed invention here merely uses generic computing components to evaluate content triggers and insert triggered content on a media channel. In particular, the individual steps of claim 1 are recited as performed by generic computer equipment, including steps performed by “executing a program instruction in a data processing apparatus.” Consistent with this, the Specification describes the invention as implemented on generic computer equipment with generic computer instructions. Spec. 32–34.

Simply reciting generic computer hardware for performing an abstract idea does not integrate that abstract idea into a practical application. *See Alice*, 573 U.S. at 225–26 (“Viewed as a whole, petitioner’s method claims simply recite the concept of intermediated settlement as performed by a generic computer. The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to ‘nothing significantly more’ than an instruction to apply the abstract idea of intermediated settlement using some unspecified, generic

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computer.” (internal citations omitted)); *Dealertrack Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (“Simply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render the claim patent eligible.”). The invention of claim 1 does not focus on improving computers as tools, but rather certain independently abstract ideas that use computers as tools. *See Elec. Power Group*, 830 F.3d at 1354.

The Guidance also discusses other ways that additional elements can integrate the judicial exception into a practical application—e.g., a particular machine or manufacture, a particular transformation, and a particular treatment of a disease. *See Guidance*, 84 Fed. Reg. at 55. Claim 1 also lacks such features.

Accordingly, claim 1 does not integrate the recited abstract ideas into a practical application. For the same reasons, independent claims 8 and 15 do not integrate the recited abstract ideas into practical applications.

The Examiner finds that the additional limitations of the dependent claims do not integrate the abstract ideas into practical applications; rather, they simply recite the use of generic computer components and do not impose meaningful limits on the computer implementations of the abstract ideas. Final Act. 4–5. Appellant does not argue the dependent claims separately. We agree with the Examiner. The dependent claims merely provide more specificity as to the content adjustment parameters, content triggers, and media platforms, more particularly claiming advertising on media platforms such as radio data systems and signage displays, all on the same generic computers. Thus, claims 2–7, 9–14, and 16–20 do not integrate the recited abstract ideas into practical applications.

Inventive Concept (Step 2B)

To determine whether a claim provides an inventive concept, we consider the additional elements—individually and in combination—to determine whether they (1) add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field or (2) simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Guidance, 84 Fed. Reg. at 56. Also, we reevaluate our conclusions about the additional elements discussed in the previous step. *Id.*

The Examiner finds that the limitations of claim 1, individually and in an ordered combination, do not recite significantly more than the abstract idea because “[t]he limitations are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.” Final Act. 3–4.

Appellant argues that the Examiner has misidentified the subject matter of the claims and, in particular, has identified three abstract concepts in claim 1, each of which is not significantly more than itself. Appeal Br. 12. According to Appellant, the Examiner has misapplied Step 2B by failing to consider the claim as a whole. *Id.* A recent update to the Guidance explains that a claim might recite multiple judicial exceptions that are distinct from one another and that, in such case, the Examiner should identify each exception and, “if possible, the examiner should consider the limitations together to be an abstract idea for Step 2A Prong Two and Step 2B (if necessary) rather than a plurality of separate abstract ideas to be

analyzed individually.” October 2019 Update: Subject Matter Eligibility, at 2.

Appellant argues that “[w]hen considered as a whole, appellant’s claims do not simply tell a computer to ‘maintain information,’ ‘monitor media content,’ and ‘adjust playout of scheduled media content.’” Appeal Br. 12. Rather, Appellant argues, the Examiner fails to take into account several limitations, in particular: “the specifically claimed requirement to ‘associat[e] a plurality of different content triggers with a plurality of different content adjustment parameters . . . specifying a particular media channel to be used to deliver triggered content’”; “that, as claimed, monitoring media content is requires monitoring for content triggers across multiple media platforms”; “the fact that when the claims adjust the playout of media content, they do so by ‘including the triggered content based on a particular content adjustment parameter associated with the particular content trigger’”; and “the claimed requirement to ‘adjust[] playout of scheduled media content’ in response to detecting a content trigger that has been ‘associated with a particular media platform.’” *Id.* (ellipses and brackets supplied by Appellant). Appellant argues, without further explanation, that, alone and in combination, each of “these unaccounted for items is significantly more than the abstract concept of ‘maintaining information,’ ‘monitoring media content,’ and ‘adjusting playout of scheduled media content.’” *Id.* at 13 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014); *BASCOM*, 827 F.3d at 1349).

In response, the Examiner finds that “[w]herein the instant invention is directed to scheduling the best content associated with a topic and advertiser, it is noted that the instant claims are directed to features of

selecting advertisement content which are well-understood, routine and conventional activities previously known to the industry.” Ans. 5. In support, the Examiner cites generally to the prior art references identified by Appellant during prosecution. *Id.* at 4. According to the Examiner, “[t]he use of generic computer components to further determine ‘maintaining information,’ ‘monitoring media content,’ and ‘adjusting playout of scheduled media content’ would not impose any meaningful limit on the computer implementation of the abstract idea.” *Id.* at 5. The Examiner notes (and we agree) that “Appellant fails to provide how the claimed invention improves the technical field of a media scheduling system.” *Id.* at 6.

Appellant reiterates its argument (discussed in Step 2A, Prong 2, above), that claim 1 improves conventional media scheduling systems by giving them the ability to deliver triggered content on different media channels. Reply 6. Appellant clarifies that it intended to argue that the claimed improvement is “**the ability to deliver triggered content on different media channels than the media channel on which the triggering content was detected,**’ [o]r perhaps ‘a media channel on a different platform than the platform on which the triggering content was detected.’” *Id.* The Examiner finds that this is not recited in claim 1. Ans. 6 (“[T]he Examiner notes that the claim[ed] invention fails to provide for a plurality of different media channels. Rather, the claimed invention simply recites features directed to ‘adjusting playout of scheduled media content on the particular media channel.’”). Appellant argues that this improvement should be inferred from the limitations of claim 1. Reply 6–7. Specifically, claim 1 recites monitoring media content played out across a plurality of media platforms and, in response to detecting a particular content trigger associated

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with a particular media platform, adjusting playout of scheduled media content on the particular media channel. *Id.* at 6. Appellant cites a portion of the Specification discussing media platforms. *Id.* at 7 (citing Spec. 12:21–24). Here, we note, Appellant appears to conflate “media platform” and “media channel” without sufficient explanation. According to Appellant, “[i]n response to detecting that content trigger, triggered content is inserted into the media channel associated with the trigger.” *Id.* at 7. We do not reach Appellant’s conclusion as to the claim language. As noted above for Step 2A, Prong 1, the recitation of including triggered content based on a particular content adjustment parameter does not require selecting a particular media channel from a plurality of media channels. Thus, Appellant’s arguments are not persuasive.

In any case, the Specification describes implementing the method of claim 1 using conventional computer equipment, such as “media automation system 110,” including “billing system 120,” “streaming broadcast chain 160,” “cloud based services such as iHeart Radio® (not illustrated),” “Internet 161,” “cellular network 166 for delivery to mobile device 168,” “on air broadcast chain 150,” and “broadcast tower 151.” Spec. 7:12–29, Fig. 1. *See also id.* at 8–9 (describing additional conventional aspects of Figure 1). In *BASCOM*, the Federal Circuit determined that claims to filtering content on the Internet, including “limitations of the claims, taken individually, recit[ing] generic computer, network and Internet components, none of which is inventive by itself,” was eligible because of its “non-conventional and non-generic arrangement” of the components, specifically, “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user,” which “gives the filtering tool both the benefits of a filter on a local

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computer and the benefits of a filter on the ISP server.” 827 F.3d at 1349–50. Unlike the claims in *BASCOM*, Appellant’s claims do not recite unconventional or non-generic arrangements of components that improve computer functionality or a technological area. Rather, we agree with the Examiner that “[t]he limitations are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.” Ans. 4.

In sum, the limitations of claim 1, considered individually and in combination, do not provide an inventive concept. For the same reasons, claims 2–20 do not provide inventive concepts.

Conclusion

Claims 1–20 are directed to abstract ideas (certain method of organizing human activity (commercial interactions, specifically advertising, marketing or sales activities or behaviors) and mental processes). The additional limitations of the claims, considered individually and in combination, do not provide an inventive concept. Accordingly, we affirm the Examiner’s determination that claims 1–20 do not recite patent-eligible subject matter.

Anticipation Rejection Under § 102

The Examiner finds that Bouazizi anticipates claims 1, 5, 7, 8, 12, 14, 15, 18, and 20. Final Act. 6–8. Appellant disputes this rejection, focusing on independent claims 1, 8, and 15 together (and not discussing the remaining dependent claims with particularity). Appeal Br. 14–16.

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Accordingly, we select claim 1 as representative for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Overview of Bouazizi

Bouazizi describes customized advertisement services based on notifications for mobile advertising. Bouazizi ¶ 1. The content of an advertisement can be encoded according to a target usage environment, for example, an advertisement encoded to be similar to mobile TV content being delivered to a user terminal. *Id.* ¶ 27. A notification message related to available advertisements and associated with a media stream is transmitted to the user terminal. *Id.* ¶ 28. A “notification stream is defined to carry notification messages comprising information regarding at least one of scheduled advertisement period(s), an announcement of availability of the at least one advertisement and a trigger of presentation of an advertisement.” *Id.*

In one embodiment, the notification message is synchronized to the media stream (e.g., a mobile TV media stream, audio stream, or video stream being transmitted to user terminals). *Id.* ¶ 30. A server can trigger the presentation of an advertisement based on certain criteria, such as a product or service currently being shown or content being consumed. *Id.* ¶ 31. “The network server decides where to insert the advertisement content based at least in part on the content of the advertisement, the media content being transmitted in the media stream, the duration of the advertisement content, the location of a user terminal and/or the like.” *Id.* One example of a notification message is “AD_PERIOD_INFO,” which includes start, end, and duration times for advertisements “to allow for

accurate synchronization to the relevant mobile TV channel streams.”

Id. ¶ 44.

Analysis

The Examiner finds that Bouazizi’s description of a server presenting advertisements triggered by the server based on certain criteria, wherein the server decides where to insert the advertisement based in part on the content of the advertisement, the media content being transmitted, the location of the user terminal, etc., discloses “maintaining information associating a plurality of different content triggers, the plurality of different content adjustment parameters including information specifying a particular media channel to be used to deliver triggered content,” as recited in claim 1. Final Act. 6–7 (citing Bouazizi ¶ 31). The Examiner further cites to Bouazizi’s description of an example notification message, AD_PERIOD_INFO, that includes start, end, and duration times, “to allow for accurate synchronization to the relevant mobile TV channel streams.” *Id.* (citing Bouazizi ¶ 44). According to the Examiner, “Bouazizi disclose[s] a system wherein start and end times (i.e., content adjustment parameters) are provided according to a 64-bit network time protocol (i.e., a particular media channel) which is utilized in synchronizing the content to the appropriate channel streams (i.e., used to deliver trigger content).” *Id.* at 14.

The Examiner further finds that Bouazizi’s description of transmitting notification messages synchronized to the media stream discloses “monitoring media content played out across a plurality of different media platforms for a content trigger,” as recited in claim 1. *Id.* at 7 (citing Bouazizi ¶ 30). As to “in response to detecting a particular content trigger associated with a particular media platform, adjusting playout of scheduled

media content on the particular media channel to include the triggered content based on a particular content adjustment parameter associated with the particular content trigger,” as recited in claim 1, the Examiner cites Bouazizi’s description of inserting advertisement content based at least in part on the content of the advertisement, the media content being transmitted in the media stream, the location of the user terminal, and other factors. *Id.* (citing Bouazizi ¶ 31). The Examiner further cites Bouazizi’s description of an AD-ANNOUNCE notice message example that contains filtering information for selecting appropriate advertisement content. *Id.* (citing Bouazizi ¶ 43).

Appellant argues that Bouazizi does not disclose “a) different adjustment parameters associated with different triggers; and b) adjustment parameters that specify which media channel is to be used for delivery of triggered content.” Appeal Br. 14. Appellant “submits . . . that broad disclosure of ‘other criteria’ does not teach or suggest the appellant’s specifically enumerated claim elements.” *Id.* at 16 (quoting Bouazizi ¶ 31 (“In another example embodiment, the presentation of the advertisement or advertisement clip is triggered by the server/network based on other criteria.”)).

As to the first allegedly missing aspect, the Examiner cites, *inter alia*, Bouazizi’s description that “[t]he network server decides where to insert the advertisement content based at least in part on the content of the advertisement, the media content being transmitted in the media stream, the duration of the advertisement content, the location of a user terminal and/or the like.” Ans. 7–8 (citing Bouazizi ¶ 31). The Examiner further cites to ¶ 48 of Bouazizi, which states “[a] receiving terminal/device can decide to display an appropriate advertisement based on user preference, location, and

actual time, among other considerations.” *Id.* at 8. From this, the Examiner finds that “Bouazizi discloses a plurality of triggers which may be based upon the content of the advertisement, the media content being transmitted, the duration of the advertisement, and the location of the user.” *Id.* at 8. The Examiner further finds such triggers referenced in the XML code reproduced on page 5 of Bouazizi. *Id.* According to the Examiner, “a plurality of triggers (i.e. a plurality of different content triggers) [are] associated with the advertisement, media content, and user information and . . . said triggers are utilized via an application-specific message comprising an XML schema of related parameters (i.e. different content adjustment parameters).” *Id.*

We are not persuaded of Examiner error as to Appellant’s first argument. The Examiner has shown that Bouazizi discloses “associating a plurality of different content triggers with a plurality of different content adjustment parameters,” as recited in claim 1. For example, presentation of advertisements can be triggered by various “other criteria,” such as the content of the advertisement, the content of the media being transmitted, etc. Bouazizi ¶ 31. As Bouazizi explains, the presentation of advertising content (e.g., when/where in the media stream the advertisement will be inserted) is based on these criteria:

Information about trigger of presentation of an advertisement comprises at least one of: information about when the advertisement to be played to the user and information about where the advertisement to be inserted within the media stream, and/or the like. A network server, for example, sends trigger information based at least in part on the content of the advertisement, the media content being transmitted in the media stream, the duration of the advertisement content, the location of a user terminal and/or the like.

Id. Appellant acknowledges this disclosure. Appeal Br. 15 (“The information included in Bouazizi’s notifications includes information that specifies **when** an advertisement is to be inserted, and **at what point in the media stream** the advertisement is to be inserted.”) (citing Bouazizi ¶ 31). We accept the Examiner’s finding that this is shown in Bouazizi’s XML code reproduced at page 5, which Appellant does not contest. We further note that Bouazizi’s disclosure is similar to how the Specification describes content adjustment parameters:

In some embodiments, content adjustment parameters can include system parameters, which can be used to specify an action to take in response to identifying triggering content. For example, a content adjustment parameter can be used to indicate that triggering content should result in adding triggered content, removing previously scheduled content, increasing the frequency of playback of a designated message for a time period, reducing the frequency of playback of a designated message for a time period, or triggering some combination of these actions.

Spec. 14:24–30. Appellant does not explain persuasively why the Examiner erred in finding that Bouazizi’s description discloses “associating a plurality of different content triggers with a plurality of different content adjustment parameters,” as recited in claim 1.

As to Appellant’s second argument (“Bouazizi does not disclose . . . b) adjustment parameters that specify which media channel is to be used for delivery of triggered content,” Appeal Br. 14), Appellant characterizes claim 1 as requiring:

when a content trigger is detected, triggered content is to be delivered on whatever media channel is specified by the content adjustment parameter associated with that content trigger. When a different content trigger is detected, triggered content is delivered on whatever media channel is specified by the content

adjustment parameter associated with the ‘different’ content trigger.

Appeal Br. 14.

In response, the Examiner points to Bouazizi’s description of example notification message “AD_PERIOD_INFO,” (Bouazizi ¶ 44), and finds that “Bouazizi provides for the parameter of ‘AD_PERIOD_INFO’ (i.e. the content adjustment parameter) which may be further defined within the XML schema to provide for the specific 64-bit network time protocol (i.e. a particular media channel to be used to deliver triggered content).” Ans. 8–9. Thus, the Examiner finds that the specific 64-bit network time protocol is information specifying a particular media channel to be used to deliver triggered content. Appellant does not contest this finding, and we accept it. Thus, we find that Bouazizi discloses “associating a plurality of different content triggers with a plurality of different content adjustment parameters, *the plurality of different content adjustment parameters including information specifying a particular media channel to be used to deliver triggered content,*” as recited in claim 1 (emphasis added).

In reply, Appellant argues that

there is nothing in Bouazizi about detecting a trigger on one platform or channel, and then choosing the channel in which to insert triggered content ‘based on a particular content adjustment parameter associated with the particular content trigger,’ where that content adjustment parameter includes including information specifying a particular media channel to be used to deliver triggered content.

Reply Br. 8. Appellant “acknowledges that there is not [a] separate ‘selecting a channel’ element explicitly recited in the claims,” but argues that “the claims do require that the playout of scheduled media is adjusted

based on the particular media channel associated with the triggering content.” *Id.*

We disagree. Claim 1, for example, recites “adjusting playout of scheduled media content on the particular media channel to include the triggered content based on a particular content adjustment parameter associated with the particular content trigger.” According to claim 1, “the plurality of different content adjustment parameters include[] information specifying a particular media channel to be used to deliver triggered content,” but are not limited to it. In other words, claim 1 contemplates other content adjustment parameters. *See, e.g.*, Spec. 14 (“In some embodiments, the content adjustment parameters can specify that a general message associated with the user is to be triggered, while in other embodiments the content adjustment parameter can specify that a message including specific content is triggered.”). Thus, the “adjusting playout of scheduled media content” might be based on an adjustment parameter other than “the particular media channel.” Moreover, to the extent that Appellant is arguing that the claims require selection of a channel from among a plurality of channels, we disagree for the reasons given above in our discussion of the § 101 rejection.

In sum, Appellant has not shown that the Examiner erred in finding that Bouazizi anticipates claim 1. As noted above, Appellant does not argue claims 5, 7, 8, 12, 14, 15, 18, and 20 separately and we see no error in the Examiner’s additional findings for these claims (Final Act. 7–8). For the same reasons as given for claim 1, Appellant has not shown that the Examiner erred in finding that Bouazizi anticipates claims 5, 7, 8, 12, 14, 15, 18, and 20. Accordingly, we affirm the Examiner’s findings that Bouazizi anticipates claims 1, 5, 7, 8, 12, 14, 15, 18, and 20.

Obviousness Rejections Under § 103

The Examiner cites Konig for the additional limitations of claims 2, 9, and 16 (Final Act. 8–9); Konig and Singer for the additional limitations of claims 3 and 10 (*id.* at 9–11); Furney for the additional limitations of claims 4, 11, and 17 (*id.* at 11–12); and Hartmaier for the additional limitations of claims 6, 13, and 19 (*id.* at 12). Appellant does not argue claims 2–4, 6, 9–11, 16, 17, and 19 separately and does not contend that the Examiner erred in the additional findings. Appeal Br. 17. We see no error in these additional findings. Accordingly, we affirm the Examiner’s obviousness rejections of claims 2–4, 6, 9–11, 16, 17, and 19 for the same reasons as given above for claim 1.

CONCLUSION

The Examiner’s rejections are affirmed.

More specifically,

The Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejection of claims 1, 5, 7, 8, 12, 14, 15, 18, and 20 under 35 U.S.C. § 102(a)(2) as being anticipated by Bouazizi is affirmed.

The Examiner’s rejection of claims 2, 9, and 16 under 35 U.S.C. § 103 as being unpatentable over Bouazizi and Konig is affirmed.

The Examiner’s rejection of claims 3 and 10 under 35 U.S.C. § 103 as being unpatentable over Bouazizi, Konig, and Singer is affirmed. Final Act. 9–11.

The Examiner’s rejection of claims 4, 11, and 17 under 35 U.S.C. § 103 as being unpatentable over Bouazizi and Furney is affirmed.

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The Examiner's rejection of claims 6, 13, and 19 under 35 U.S.C. § 103 as being unpatentable over Bouazizi and Hartmaier is affirmed.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-20	101	Eligibility	1-20	
1, 5, 7, 8, 12, 14, 15, 18, 20	102	Bouazizi	1, 5, 7, 8, 12, 14, 15, 18, 20	
2, 9, 16	103	Bouazizi, Konig	2, 9, 16	
3, 10	103	Bouazizi, Konig, Singer	3, 10	
4, 11, 17	103	Bouazizi, Furney	4, 11, 17	
6, 13, 19	103	Bouazizi, Hartmaier	6, 13, 19	
Overall Outcome:			1-20	

TIME PERIOD FOR RESPONSE

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