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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte JIANXIU HAO, ZHIYING JIN,
DAHAI REN, and LAZAR KOYFMAN

————————————

Appeal 2019-000754
Application 11/495,274
Technology Center 3600

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Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
MEREDITH C. PETRAVICK, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Jianxiu Hao, Zhiying Jin, Dahai Ren, and Lazar Koyfman (Appellant[2]) seeks review under 35 U.S.C. § 134 of a final rejection of claims 1–4, 6–14, 16–19, and 22–26, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellant invented a way of providing a client device with requested information and advertisements. Specification para. 12.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A method, comprising:

[1] receiving, by a server,

a first request for information that is related to a specified location,

the first request for information being received from a client device via a communications network;

[2] formulating, by the server,

a first query configured to retrieve one or more advertisements related to the specified location;

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[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed August 10, 2018) and Reply Brief ("Reply Br.," filed November 6, 2018), and the Examiner's Answer ("Ans.," mailed September 18, 2018), and Final Action ("Final Act.," mailed March 21, 2018).
[2] 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 Verizon Communications Inc. (Appeal Br. 3).

[3] providing, by the server and to an advertisement database,

> the first query;

[4] receiving, by the server and from the advertisement database,

> a response to the first query, the response to the first query
>
> > including one or more advertisements related to the specified location;

[5] selecting, by the server,

> a particular advertisement, from the one or more advertisements,
>
> to be sent to the client device,
>
> the server selecting the particular advertisement based on a randomly selected selection heuristic, the randomly selected selection heuristic including one of:
>
> > a round robin selection heuristic,
> >
> > a random selection heuristic,
> >
> > a weighted round robin selection heuristic,
> >
> > or
> >
> > a modified random selection heuristic;

[6] formulating, by the server and based on the first request,

> a second query
>
> > configured to retrieve the information that is related to the specified location;

[7] providing, by the server and to a content database and a map database,

> the second query;

[8] sending, by the server,

> the particular advertisement,
>
> the client device displaying the particular advertisement during a period of time in which the second query is

being processed by the content database and the map
database;

[9] receiving, by the server and from the content database and
the map database,

a first search result that is responsive to the second query,
the first search result including:

the information that is related to the specified
location,

and

a map displaying a geographic area associated with
the specified location;

and

[10] sending, by the server and to the client device, the first
search result after sending the particular advertisement to the
client device, the client device one of:

displaying the first search result, after the period of time
in which the second query is being processed by the
content database and the map database, instead of
displaying the particular advertisement,

or

displaying the particular advertisement for a particular
amount of time before displaying the first search result.

The Examiner relies upon the following prior art:

Name	Reference	Date
McGuire	US 2003/0023489 A1	Jan. 30, 2003
Durand	US 2005/0245241 A1	Nov. 3, 2005
Ives	US 2007/0067305 A1	Mar. 22, 2007

Claims 1–4, 6–14, 16–19, and 22–26 stand rejected under 35 U.S.C.
§ 101 as directed to a judicial exception without significantly more.

Claims 1–4, 6–14, 16–19, and 22–26 stand rejected under 35 U.S.C.
§ 103(a) as unpatentable over Ives, McGuire, and Durand.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of results desired.

The issues of obviousness turn primarily on whether the art applied describes all limitations.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Ives

01. Ives is directed to servers for search engine systems, providing a search service over a wireless network, using the search service, and to corresponding apparatus or software. Ives para. 2.

02. Ives describes a query server of a mobile search engine system for searching content items accessible online, the query server being arranged to send search results across a wireless network to a mobile device for presentation to a user by a browser on the mobile device in response to a search query, and being arranged to send at least a first screenview of the search results to the browser, and send instructions in a scripting language to the browser for a background process to be run by the browser at least while the first screenview is presented to the user, the query server and the background process being arranged to cooperate to send further information to the mobile device relating to the search results, for

presentation to the user under the control of the scripting language instructions. Ives para. 15.

03. Ives describes search results being split by a query server so that the user can view the first screenview while the background process is used to download the rest of the information relating to the search results. Thus the critical delay before the user can view the first results can thus be reduced since less information need be contained in the first screenview. The further information relating to the search results can then be viewed as desired without the need for a further round trip delay across the wireless network. Furthermore the use of the instructions to control presentation of the further information means the user can be presented with a simpler navigation model than that possible with the limitations of scrolling and or page-reloading required in the known browser solution. Ives para. 16.

04. Ives describes using a background process to display information such as advertising material during the wait interval while a page is being downloaded. This can reduce the amount of page space per result item by not displaying adverts at the same time as result items. Instead, the interval between pressing a key that initiates a page change and the desired page being ready to be displayed, is used to display advertising content. A search query page is sent with interval advertising material and scripting language instructions for presenting the material. The search query page is displayed, and the background process stores the interval advert. Ives para. 123–124.

McGuire

05.   McGuire is directed to the targeted distribution of advertisements over a network. McGuire para. 2.

06.   McGuire describes available advertisements for a web site and location combination being served in a round robin manner. McGuire para. 116.

Durand

07.   Durand is directed to providing mobile advertising and directory service to wireless handsets in a rich multimedia format. Durand para. 3.

08.   Durand describes an exemplary presentation that shows a map that is specific to the user's current, default, or manually entered location. Durand para. 115.

ANALYSIS

Claims 1–4, 6–14, 16–19, and 22–26 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

STEP 1[3]

Claim 1, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

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[3] For continuity of analysis, we adopt the steps nomenclature from 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Revised Guidance").

STEP 2

The Supreme Court

> set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, "[w]hat else is there in the claims before us? To answer that question, . . . consider the elements of each claim both individually and "as an ordered combination" to determine whether the additional elements "transform the nature of the claim" into a patent-eligible application. [The Court] described step two of this analysis as a search for an "'inventive concept'"—i.e., an element or combination of elements that is "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself."

Alice Corp. v. CLS Bank Int'l, 573 U.S. 208, 217–18 (2014) (citations omitted) (*citing Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if the claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception, i.e., that the claims "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." Revised Guidance, 84 Fed. Reg. at 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the

additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

At a high level, and for our preliminary analysis, we note that method claim 1 recites receiving request data, formulating and providing query data, receiving response data, selecting advertisement data, formulating and providing more query data, sending advertisement data, receiving search result data, and sending advertisement and search result data. Formulating data is analyzing and generating data. Providing data is transmitting data. Thus, claim 1 recites receiving, generating, transmitting, and analyzing data. None of the limitations recite technological implementation details for any of these steps, but instead recite only results desired by any and all possible means.

From this we see that claim 1 does not recite the judicial exceptions of either natural phenomena or laws of nature.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent in-eligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas include (1) mathematical concepts[4], (2) certain methods of organizing human activity[5], and (3) mental processes[6]. Among those certain methods

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[4] *See, e.g., Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).
[5] *See, e.g., Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219-20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1383 (Fed. Cir.

of organizing human activity listed in the Revised Guidance are commercial or legal interactions. Like those concepts, claim 1 recites the concept of managing advertising. Specifically, claim 1 recites operations that would ordinarily take place in advising one to select and send an ad with search results from a query including a specified location. The advice to select and send an ad with search results from a query including a specified location involves sending a particular advertisement, which is an economic act, and selecting the particular advertisement, which is an act ordinarily performed in the stream of commerce. For example, claim 1 recites "sending the particular advertisement," which is an activity that would take place whenever one is displaying advertising over some media. Similarly, claim 1 recites "selecting the particular advertisement," which is also characteristic of advertising management.

The Examiner determines the claims to be directed to sending advertising. Final Act. 3. The preamble to claim 1 does not recite what it is to achieve, but the steps in claim 1 result in selecting and sending an ad with search results from a query including a specified location absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1–10 recite generic and conventional receiving, generating, transmitting, and analyzing of advertising, query, and location data, which advise one to apply generic functions to get to these results. The limitations thus recite advice for

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2017); *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160–61 (Fed. Cir. 2018).
[6] *See, e.g.*, *Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

selecting and sending an ad with search results from a query including a specified location. To advocate selecting and sending an ad with search results from a query including a specified location is conceptual advice for results desired and not technological operations.

The Specification at paragraph 12 describes the invention as relating to providing a client device with requested information and advertisements. Thus, all this intrinsic evidence shows that claim 1 recites managing advertising. This is consistent with the Examiner's determination.

This in turn is an example of commercial or legal interactions as a certain method of organizing human activity because managing advertising coordinates interactions to advertise goods and services in the promotion of commerce. The concept of managing advertising by selecting and sending an ad with search results from a query including a specified location is one idea for managing the selection and transmission. The steps recited in claim 1 are part of how this might conceptually be premised.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014)(advertising).

From this we conclude that at least to this degree, claim 1 recites managing advertising by selecting and sending an ad with search results from a query including a specified location, which is a commercial and legal interaction, one of certain methods of organizing human activity identified in the Revised Guidance, and, thus, an abstract idea.

STEP 2A Prong 2

The next issue is whether claim 1 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to

some technological implementation or application of, or improvement to, this concept i.e. integrated into a practical application.[7]

> At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, "all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. "[A]pplication[s]" of such concepts " 'to a new and useful end,' " we have said, remain eligible for patent protection. Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the " 'buildin[g] block[s]' " of human ingenuity and those that integrate the building blocks into something more.

Alice, 573 U.S. at 217 (citations omitted).

Taking the claim elements separately, the operation performed by the computer at each step of the process is expressed purely in terms of results, devoid of implementation details. Steps 1, 4, and 9 are pure data gathering steps. Limitations describing the nature of the data do not alter this. Steps 3, 7, 8, and 10 recite basic conventional data operations such as generating, updating, and storing data. Steps 2, 5, and 6 recite generic computer processing expressed in terms of results desired by any and all possible means and so present no more than conceptual advice. All purported inventive aspects reside in how the data is interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellant's claim 1 simply recites the concept of managing advertising by selecting and sending an ad with search results

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[7] *See, e.g.*, *Alice*, 573 U.S. at 223, discussing *Diamond v. Diehr*, 450 U.S. 175 (1981).

from a query including a specified location as performed by a generic computer. This is no more than conceptual advice on the parameters for this concept and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 1 does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The 16+ pages of specification do not bulge with disclosure, but only spell out different generic equipment[8] and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of managing advertising by selecting and sending an ad with search results from a query including a specified location under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, claim 1 at issue amounts to nothing significantly more than an instruction to apply managing advertising by selecting and sending an ad with search results from a query including a specified location using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

None of the limitations reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field, applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition, implements a judicial exception with, or uses

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[8] The Specification describes any one of a number of known mobile or portable computing devices, such as a cellular telephone, personal digital assistant, handheld computer. Spec. para. 13.

a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim, effects a transformation or reduction of a particular article to a different state or thing, or applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

We conclude that claim 1 is directed to achieving the result of managing advertising by advising one to select and send an ad with search results from a query including a specified location, as distinguished from a technological improvement for achieving or applying that result. This amounts to commercial or legal interactions, which fall within certain methods of organizing human activity that constitute abstract ideas. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 1 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception.

The introduction of a computer into the claims does not generally alter the analysis at *Mayo* step two.

> the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea "while adding the words 'apply it'" is not enough for patent eligibility. Nor is limiting the use of an abstract idea "'to a particular technological environment.'" Stating an abstract idea while adding the words "apply it with a computer" simply combines those two steps, with the same deficient result. Thus, if a patent's recitation of a computer amounts to a mere instruction to "implement[t]" an abstract idea "on . . . a computer," that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of "additional feature[e]" that provides any "practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself."

Alice, 573 U.S. at 223–24 (citations omitted).

"[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer." *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for receiving, generating, transmitting, and analyzing data amounts to electronic data query and retrieval—one of the most basic functions of a computer. The limitations of the client device displaying data (in steps 8 and 10) are not steps, but recitations of what another device is to do with the claim results, *viz.* an expected further action, which is outside the sequence of recited steps and therefore aspirational rather than functional. Even

giving these weight, however, they are still no more than conventional data display with rudimentary analysis to determine what to display. All of these computer functions are generic, routine, conventional computer activities that are performed only for their conventional uses. *See Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *See also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' . . . those functions can be achieved by any general purpose computer without special programming"). None of these activities is used in some unconventional manner nor does any produce some unexpected result. Appellant does not contend it invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, "even if a process of collecting and analyzing information is 'limited to particular content' or a particular 'source,' that limitation does not make the collection and analysis other than abstract." *SAP America, Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant's claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data reception-generation-transmission-analysis is equally generic and conventional. *See Ultramercial*, 772 F.3d at 715 (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc*., 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v.*

Comcast Cable Communications, LLC, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

We conclude that claim 1 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

Claim 1 is representative. The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

As to the structural claims, they

> are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long "warn[ed] ... against" interpreting § 101 "in ways that make patent eligibility 'depend simply on the draftsman's art.'

Alice, 573 U.S. at 226. As a corollary, the claims are not directed to any particular machine.

LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by the commercial and

legal interaction of managing advertising by advising one to select and send an ad with search results from a query including a specified location, without significantly more.

APPELLANT'S ARGUMENTS

As to Appellant's Appeal Brief arguments, we adopt the Examiner's determinations and analysis from Final Action 2–6 and Answer 3–7 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellant's argument that

the Examiner is just making a conclusory allegation that the limitations of the independent [claim] "describe abstract ideas that correspond to concepts identified as abstract ideas by the courts" and is then just reciting concepts that the concepts identified by the courts (final Office Action at page 3). Therefore, the Examiner fails to consider "the claim as a whole" or identify the alleged abstract idea "as it is recited (i.e., set forth or described) in the claim."

Reply Br. 3. Such consideration and identification are shown *supra*.

We are not persuaded by Appellant's argument that

Appellant also demonstrated that, for example, independent claim 1 as a whole is directed to enabling a computing device to provide a local advertisement to client devices associated with potential customers located near an entity associated with the local advertisement based on search queries submitted via the client devices and to enabling the client devices to display the local advertisement only while the search queries are being processed. Such an arrangement enables the entity to conserve computing resources associated with providing the local advertisement to client devices not located near the entity. The arrangement also enables the client devices to conserve computing resources associated with displaying the advertisement with search results.

Reply Br. 3. The first sentence shows that, as we determine *supra*, the claims are directed to the judicial exception of the abstract idea of certain

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methods of organizing human activity as exemplified by the commercial and legal interaction of managing advertising by advising one to select and send an ad with search results from a query including a specified location, without significantly more. Limitations regarding timing of display are no more than timing parameters based on when data is available for display — the ad is retrieved first and displayed first. Conservation of resources is no more than a serendipitous side effect of timing in any context.

Appellant further argues that the asserted claims are akin to the claims found patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014). Reply Br. 3–4. In *DDR Holdings*, the Court evaluated the eligibility of claims "address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after 'clicking' on an advertisement and activating a hyperlink." *Id.* at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no "pre-Internet analog." *Id.* at 1258. The Court cautioned, however, "that not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* For example, in *DDR Holdings* the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. *See id.* at 1258–59 (citing *Ultramercial,* 772 F.3d a t 15–16). As noted there, the *Ultramercial* claims were "directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before." *Id.* at 1258 (quoting *Ultramercial,* 772 F.3d at 715–

16). Nevertheless, those claims were patent ineligible because they "merely recite[d] the abstract idea of 'offering media content in exchange for viewing an advertisement,' along with 'routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.'" *Id.*

Appellant's asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited "providing [a] media product for sale at an Internet website;" "restricting general public access to said media product;" "receiving from the consumer a request to view [a] sponsor message;" and "if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query." 772 F.3d at 712. Similarly, Appellant's asserted claims recite receiving, generating, transmitting, and analyzing data. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

> We are not persuaded by Appellant's argument that
>
> the claims focus on providing computer capabilities that did not previously exist (e.g., a capability of enabling a computing device to provide a local advertisement to client devices located near an entity associated with the local advertisement based on search queries submitted via the client devices, and enabling the client devices to display the local advertisement only while the search queries are being processed).

Reply Br. 4. This is not a computer capability but an information timing provision. At best, the claims improve the information presented to a prospect by product marketers. This is insufficient for patent eligibility. "The claims are focused on providing information to traders in a way that

helps them process information more quickly, not on improving computers or technology. . . . The "tool for presentation" here . . . is simply a generic computer." *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1378, 1384–85 (Fed. Cir. 2019)(citations omitted).

We are not persuaded by Appellant's argument that the claims contain an inventive concept that is also found in the specific ordered combination of the limitations, similar to the Federal Circuit's findings in *BASCOM* (*BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). Reply Br. 4–5. Initially, we remind Appellant that *BASCOM* did not find claims eligible on the substance, but rather that the Appellees did not provide sufficient evidence to support a 12(b)(6) motion to dismiss in which facts are presumed in the non-movant's favor.

The key fact in *BASCOM* was the presence of a structural change in "installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server." *BASCOM*, 827 F.3d at 1350. The instant claims have no analogous structural benefit.

Appellants cite *Berkheimer* for the proposition that evidence of something being conventional is necessary. *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). Reply Br. 5. Support for this finding is provided under Step 2B supra.

Claims 1–4, 6–14, 16–19, and 22–26 rejected under 35 U.S.C. § 103(a) as

unpatentable over Ives, McGuire, and Durand

We are persuaded by Appellant's argument that

> even assuming, paragraph 119 of IVES discloses "advertisements related to the specific location," . . . this does not disclose or suggest a server sending "the first search result" to the client device <u>after the same server "send[s]</u> the particular advertisement to the client device," let alone that "the first search result" and "the particular <u>advertisement</u>," are related to the same, specified location.

Reply Br. 8. The Examiner determines that further background searching occurs during ad display. Ans. 7–8. This does not describe the advertisement being displayed prior to the first search result. Instead, Iver describes displaying ads in the interval following a search result while processing the next result.

CONCLUSIONS OF LAW

The rejection of claims 1–4, 6–14, 16–19, and 22–26 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 1–4, 6–14, 16–19, and 22–26 under 35 U.S.C. § 103(a) as unpatentable over Ives, McGuire, and Durand is improper.

CONCLUSION

The rejection of claims 1–4, 6–14, 16–19, and 22–26 is affirmed.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4, 6–14, 16–19, 22–26	101	Eligibility	1–4, 6–14, 16–19, 22–26	
1–4, 6–14, 16–19, 22–26	103	Ives, McGuire, Durand		1–4, 6–14, 16–19, 22–26
Overall Outcome			1–4, 6–14, 16–19, 22–26	

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) (2011).

AFFIRMED