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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* JEFFREY E. YOUNG, VICTOR SAAR, and  
DAVID NUESCHELER

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Appeal 2019-004220  
Application 13/855,235  
Technology Center 3600

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Before RICHARD M. LEBOVITZ, ULRIKE W. JENKS, and  
MICHAEL A. VALEK, *Administrative Patent Judges*.

JENKS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from Examiner's decision to reject claims as directed to patent-ineligible subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellant identifies the real party in interest as Adobe Systems Incorporated. Appeal Br. 1. We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42(a).

STATEMENT OF THE CASE

Claims 1, 7, 10, 11, 14, 16, 21, 22, 24–27, 29, 30, and 32–37 are on appeal, and can be found in the Claims Appendix of the Appeal Brief.

Claim 1 is representative of the claims on appeal, and reads as follows:

1. A method for simulating personalized web content based on combinations of user interactions with an e-commerce service provided by a website and a user characteristic that is independent of the website, the method comprising:

[A] requesting and receiving, by a processor of an author device, simulation content via communication with a server via a data network; and

[B] executing, by the author device, executable code included in the received simulation content, wherein executing the executable code included in the received simulation content configures the author device to perform operations comprising:

[B1] configuring a display device that is coupled to the author device to display a user interface comprising

(i) a simulation panel for receiving input identifying segments and

(ii) a simulated use of the website within a browser as displayed to an end user,

wherein each segment comprises a respective one of the combinations of user interactions, wherein the user interactions with the e-commerce service comprises

(i) a first set of interactions selecting a first combination of online content items to be included in a first electronic transaction with the e-commerce service and

(ii) a second set of interactions selecting a second combination of online content items to be included in a second electronic transaction with the e-commerce service,

[B2] receiving, via the simulation panel and during the simulated use of the website, the input providing a first test input for identifying a first segment and a second test input for identifying a second segment,

wherein the first segment corresponds to the first set of interactions and a first user characteristic independent of the website, wherein the second segment corresponds to the second set of interactions and a second user characteristic independent of the website,

[B3] selecting, from the received simulation content, a first personalized content portion based on receiving the first test input and a second personalized content portion, different from the first personalized content portion, based on receiving the second test input,

[B4] updating the user interface to display, during a first time period in which the simulation panel has received the first test input, a web page of the website with the first personalized content portion included in the web page, and

[B5] updating the user interface to replace, within the web page and during a second time period in which the simulation panel has received the second test input, the first personalized content portion with the second personalized content portion.

Appeal Br. 29–30 (Claims Appendix)(formatting and numbering in square bracketing added). In short, the claim is directed to requesting and receiving executable code for running simulations of website content on an author device, the simulation allows the author to evaluate the look of the website after receiving test input information combined with a user characteristic. The other independent claims, claims 10 and 16, recite a system and a non-transitory computer readable medium for implementing the method.

Appellant requests review of Examiner’s rejection of claims 1, 7, 10, 11, 14, 16, 21, 22, 24–27, 29, 30, and 32–37 under 25 U.S.C. § 101, as being directed to patent-ineligible subject matter.

## ANALYSIS

Examiner finds that claim 1 is directed to a method that “recite[s] functions of collecting information (in that it is merely receiving constraints), organizing data (in that it is merely selecting what to provide based on the received constraints), and displaying information (in that it is merely displaying information that is selected based on the constraints).” Ans. 5–6. Examiner finds that “[s]imulating or previewing results based on constraints or inputs is a commercial or legal interaction (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations) which are certain methods of organizing human activity.” *Id.* at 15. Organizing human activity are in the grouping of abstract ideas. *Id.* at 8; *see* Guidance, 84 Fed. Reg. 50–57 (Jan. 7, 2019).

Appellant contends that the claims are not directed to an abstract idea “because it recites a user interface having a specific structure . . . that is addressed to and resolves a specifically identified problem in the prior state of the art.” Appeal Br. 6–7 (citing *Data Engine Technologies LLC v. Google LLC*, 906 F.3d 999, 1009 (Fed. Cir. 2018)). In other words, Appellant urges, the claims are directed to a technical improvement as follows:

The structure of the interface is paired with functionality for simulating the operation of a website. For instance, the claimed interface further allows for modifying, “via the simulation panel and during the simulated use of the website,” different “test input[s]” for identifying a “segment [that] corresponds to [a] set of interactions and a . . . user characteristic independent of the website.” The claimed invention “updat[es] the user interface to replace, within the web page and during a . . . time period in which the simulation panel has received [a particular] test input, [a] first personalized content portion [selected based on a first test input] with [a]

second personalized content portion [selected based on a second test input].”

*Id.* at 9 (bracketing in original). Appellant contends that the claim provides a more intuitive authoring tool and is thereby patent-eligible technical improvement. *Id.* at 14 (citing *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018)).

The Supreme Court has established a 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.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). The United States Patent and Trademark Office (PTO) issued the 2019 Revised Patent Subject Matter Eligibility Guidance (“Guidance”), indicating how the PTO can analyze patent eligibility under the Supreme Court’s two-step framework and the October 2019 Update to the Revised Guidance (“Update”), which provides further details regarding how the Patent Office is to analyze patent-eligibility questions under 35 U.S.C. § 101. Guidance, 84 Fed. Reg. 50–57 (Jan. 7, 2019); Update, 84 Fed. Reg. 55,942 (Oct. 18, 2019). Following the Guidance, under Revised Step 2A, we first look to whether the claim recites the following:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)-(c), (e)-(h)).

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

(3) adds specific limitations beyond the judicial exception that are 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.

We select claim 1 as representative of the claimed subject of this rejection. We agree with and adopt Examiner’s statement of the rejection and responses to Appellant’s arguments as set forth in the Answer. If we do not mention specifically separately argued points, we agree with and adopt Examiner’s positions with respect to these points.

*STEP 1:*

Claim 1 is “[a] method for simulating personalized web content based on combinations of user interactions with an e-commerce service provided by a website and a user characteristic that is independent of the website.” We therefore conclude that claim 1 encompasses a “process” for carrying out a website simulation and thus falls into one of the broad categories of patentable subject matter under section 101. *See* 35 U.S.C. § 100 (“(b) The term ‘process’ means process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.”). Consequently, we proceed to the next steps of the analysis.

*STEP 2A, Prong One:*

Under the Guidance, in determining what concept a claim is “directed to” in step one of the Supreme Court’s two-step framework, we first look to whether the claim recites any judicial exceptions, such as managing relationships or interaction between people or business relations, i.e., methods of organizing human activity, mental processes, and/or mathematical concepts. Guidance, 84 Fed. Reg. at 52, 54 (Step 2A, Prong One).

Claim 1 recites “[a] method for simulating personalized web content based on combinations of user interactions with an e-commerce service provided by a website and a user characteristic that is independent of the website.” Appeal Br. 29 (Claims Appendix). The process includes “requesting and receiving” executable code over a network, “configuring a display device” to contain a “simulation panel” and a panel containing a “simulated use of a website,” the process also includes providing simulated user interactions and “updating the user interface” based on the input received. The simulated user interactions include entering test input and combining that information with user characteristics to retrieve simulation content.

Thus, when read in context with Appellant’s Specification the user input determines the personalized promotional content that would be displayed to an end user. Therefore, Appellant’s claim recites a simulated process of a commercial interaction between a user and a vendor. The Guidance and the cases cited there consider commercial interactions as a method of organizing human activity, and ultimately an abstract idea. *See* Guidance, 84 Fed. Reg. at 52 (abstract ideas include “(b) Certain methods of



organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial . . . interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations”) (emphasis added)); *see* Ans. 15.

Appellant contends that “Examiner erred by finding that the claims are directed to an abstract idea merely because they include some feature that may have a non-digital analogue.” Appeal Br. 11.

We are not persuaded. Under *Step 2A, Prong One* the issue that must be addressed is whether the claims recite a judicial exception, here an abstract idea. Appellant argues that the claims provide a practical application, which we address later in our analysis, but does not adequately explain why the steps themselves in the claim do not recite the simulation of a commercial interaction, which is a type of method of organizing human activity. *See* Appeal Br. 5–7.

Accordingly, we conclude the claim recites a method of organizing human activity identified in the Guidance, and thus an abstract idea. We, therefore, agree with Examiner that Appellant’s claim 1 recites a judicial exception in the form of abstract idea.

*STEP 2A, Prong Two:*

Having made the determination that claim 1 recites an abstract idea, under the Guidance, we next examine whether there are additional elements beyond the abstract idea that integrate the judicial exception into a practical application. Under the Guidance, this is referred to as the “Prong Two” inquiry under “Step 2A.” Guidance, 84 Fed. Reg. at 54–55. Under the Prong Two analysis, we look to whether the claim as a whole “appl[ies], rel[ies]

on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception.” *Id.*

In making a determination under Step 2A, Prong Two we look to see if the claims recite additional elements such as improvements to computer functioning or another technological field, applying the judicial exception by use of particular machine, transformational reduction of a particular article to different state or thing, or using the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* MPEP 2106.05; Guidance, 84 Fed. Reg. at 54–55.

Claim 1 requires a generic “processor,” “executable code,” and “a display device” that perform normal computer functionality, i.e., receive test information, process information, and display information to be used as tools to perform the abstract idea. One of the “examples in which a judicial exception has not been integrated into a practical application” is when “[a]n additional element . . . merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea.” Guidance, 84 Fed. Reg. at 55. Moreover, that the program instructions cause the computer processor to update the display after receiving test input is a data gathering activity. *See* MPEP § 2106.05(g):

An example of post-solution activity is an element that is not integrated into the claim as a whole, *e.g.*, a printer that is used to output a report of fraudulent transactions, which is recited in a claim to a computer programmed to analyze and manipulate information about credit card transactions in order to detect whether the transactions were fraudulent.

Similarly, a program that instructs the display to update the simulated website with personalized content based on a test input and user

characteristic is similarly insignificant post-solution activity. *See, e.g., Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241–42 (Fed. Cir. 2016) (holding that printing or downloading generated menus constituted insignificant extra-solution activity).

The present claim recites a user interface containing a “simulation panel” that can receive input and another panel that displays a simulated website within a browser. In other words, read in context, the claim recites one display showing multiple windows, but does not specify any particular rules or features for doing so. Rather, the claims merely recite “the graphical user interfaces to collect, organize and display data to perform the idea of simulating or previewing results based on constraints or inputs,” but do not provide specific rules as to how these steps are accomplished. Ans. 7. In other words, the present claims lack an identified structural feature, such as the notebook tabs<sup>2</sup> identified in *Data Engine*, to solve a problem in prior art interfaces. *See* Ans. 13 (the claim was “found eligible [because] it solved a known technological problem in that ‘Tab Patents[’] solved this known technological problem in computers in a particular way—by providing a highly intuitive, user-friendly interface with familiar notebook tabs for navigating the three-dimensional worksheet environment.”). Instead, Examiner finds that the present claims resemble those claims in *Data Engine* that were found patent *ineligible* because they were more general and did not contain sufficient structural detail regarding the interface.

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<sup>2</sup> The evidence in *Data Engine* included articles and industry praise that touted the advantages of the notebook tabs for navigation through three-dimensional spreadsheets. *See Data Engine*, 906 F.3d at 1004.

Appellant disputes Examiner’s finding, contending instead that the present claims “are directed to the same type of practical application as the patent-eligible claims of *Data Engine*.” Appeal Br. 6–7; Reply Br. 1. Appellant contends that “the claimed invention performs various operations for reducing the complexity of simulating a website’s behavior, as compared to prior-art techniques.” Appeal Br. 9 (citing Spec. ¶¶ 14–16).

We are not persuaded because the claim recites the steps in functional terms, does not recite structural features, and does not identify the problem that is solved. We agree with Examiner that unlike the specification in *Data Engine*, the present Specification “does not discuss a specific solution to an existing technological problem” because the Specification does not identify a particular problem in need of solving. Ans. 5. In *Data Engine* our reviewing court determined that “the claim recites a specific structure (i.e., notebook tabs) within a particular spreadsheet display that performs a specific function (i.e., navigating within a three-dimensional spreadsheet).” *Data Engine*, 906 F.3d at 1010–11.

According to the Specification,  
an author may manipulate a simulation panel rendered on a display of the author device to provide user characteristics (e.g., specify by entering a value of 10 that there are 10 items in a shopping cart) from which to deliver the personalized promotional content that would be surfaced to an end user that exhibits those user characteristics.  
Spec. ¶ 15. The Specification, however, also suggests that the same information, although more time consuming, may be obtained by impersonating users and performing end-user interactions. *See* Spec. ¶ 14. Here, neither the claims nor the Specification provides sufficient structural information with respect to the “simulation panel” or specific rules on how it

is implemented. Because the only description of the “simulation panel” provided in the Specification is functional in nature and does not explain how that panel improves the computer functionality as compared to any other graphical interface for providing both inputs and simulated web pages, and the claim steps are also recited in such functional terms, we find the recited steps do not integrate the recited abstract idea into a practical application. *See Data Engine*, 906 F.3d at 1010 (citing *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (Fed. Cir. 2016)).

Examiner finds that the “technical improvement[s]” relied upon by Appellant “appears to be mere opinion of Appellant [and do] not [find] support by evidence or Appellant’s specification as in the cited court decisions.” Ans. 4. Examiner finds that the Specification “does not discuss improvements on conventional user interfaces.” Ans. 6. We agree with Examiner that unlike the record in *Data Engine*, the present Specification does not discuss a specific solution to an existing technological problem nor does the Specification identify the technological problem. Accordingly, we agree with Examiner that there is insufficient support for the position that the claims provide a solution for an existing technological problem. Furthermore, Examiner finds that the ability of a user to “enter a value of 10 to simulate the selection of ten content items rather than having to add each of the ten items separately which ‘avoids the time-consuming simulations of the prior art’” are limitations that are not required by claim 1. Ans. 8.

Appellant contends that the claim is “patent eligible at least because it recites a user interface having a specific structure . . . [and] that is addressed to and resolves a specifically identified problem in the prior state of the art.” Appeal Br. 6–7 (citing *Data Engine*, 906 F.3d at 1009); *see* Reply Br. 1

(“the claims are directed to the same type of practical application as the patent-eligible claims of *Data Engine*.”). Appellant identifies configuring the display, receiving test input, and updating the user interface as additional features. Appellant contends that it is “the combination of at least these additional features [that] provide an authoring tool, which is more intuitive and user friendly than prior solutions, in which a user interface is updated with different personalized web content in accordance with test input received via a simulation panel.” Reply Br. 3.

We are not persuaded. We look to the Specification to determine if there is sufficient detail that one of ordinary skill in the art would recognize the claimed invention as providing an improvement to the technical field, and it is the claim itself that must reflect the improvement in technology. Claim 1 elements B1, B2, B4, B5 are directed to the use of the “simulation panel.” The Specification describes the use of a “simulation panel” but does not provide sufficient detail with respect to the panel to explain how the panel provides a solution for the art-recognized problem. The Specification describes the prior art as requiring the impersonation of a user and performing end-user interactions. *See* Spec. ¶ 14. In other words, the Specification describes a method of obtaining the requisite information by having an author set up fake accounts with which to test a website functionality. The claims also do not recite sufficient detail as to how the simulation is implemented that would prevent it from preempting all ways of doing so.

A material consideration in assessing patent-eligibility is whether the claim limitations “prevent preemption of all processes for achiev[ing]” the stated function in the claim. *McRO, Inc. v. Bandai Namco Games Am. Inc.*,

837 F.3d 1299, 1315 (Fed. Cir. 2016). As explained in *McRO*, the “abstract idea exception has been applied to prevent patenting of claims that abstractly cover results where ‘it matters not by what process or machinery the result is accomplished.’ [*O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113,]; see also *Mayo*, 132 S.Ct. at 1301.” *McRO*, 837 F.3d at 1314. Here, Appellant has not guided us to any rules in the claim, or other limitations specifying a particular application, that would prevent the abstract idea, itself, from being preempted. A claim must include more than implementation on generic components or machinery to qualify as an improvement to an existing technology. See, e.g., *Affinity Labs*, 838 F.3d at 1264–65; *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 612–13 (Fed. Cir. 2016).

Accordingly, Appellant’s additional elements recited in claim 1, considered individually and as an ordered combination, do not improve the functioning of a computer or other technology, are not applied with any particular machine (except for generic computer parts), do not effect a transformation of a particular article to a different state, and 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 no more than a drafting effort designed to monopolize the exception. See MPEP §§ 2106.05(a)-(c), (e)-(h).

*STEP 2B:*

Step 2B requires that we look to whether the claim “adds a specific limitation beyond the judicial exception that [is] not ‘well-understood, routine, conventional’ in the field.” See MPEP § 2106.05(d) (9th ed., rev. 08.2017 (Jan. 2018)).

As the Guidance indicates, unconventional data gathering in combination with a specifically recited application can render a claim patent eligible under § 101 despite the fact that the judicial exception is not considered to be integrated into a practical application. Guidance, 84 Fed. Reg. at 56 n.39 (citing *Exergen Corp. v. Kaz USA, Inc.*, 725 F. App'x 959, 966 (Fed. Cir. 2018)). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. See *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 90 (2012); see also *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”). Thus, although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or nonobviousness, but rather, a search for “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*, 573 U.S. at 218 (citation omitted).

Examiner identifies “organizing the information according to constraints (in that it determines what to provide in response to the constraints), and displaying information based on the collecting and organizing” as conventional limitations that use a computer as a tool to perform the abstract idea of organizing human activity. Ans. 17; see MPEP 2106.05(h). Examiner has cited case law as well as other documents<sup>3</sup> to

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<sup>3</sup> See Final Office Action dated July, 5, 2018 (“Final Act.”) pages 13–14.



establish that performing these steps in a computer environment is conventional. *See* Ans. 20 (“It is noted that all of the cited documents here are previously of record in this case.”).

Appellant contends that Examiner has not demonstrated with evidence the well-understood, routine, or conventional nature of the combination of additional claim elements in the independent claims. Appeal Br. 24.

Appellant contends that Examiner’s rejections rely on what is known rather than establishing what is conventional. Reply Br. 13.

We are not persuaded by Appellant’s contention that Examiner has not sufficiently established that running a website simulation on a computer involves merely well-understood and routine activities. As discussed above, we do not find that claim 1 recites sufficient structural information with respect to the “simulation panel” that can distinguish it from any other computer implemented graphic display. In other words, the lack of structural detail required for the recited “simulation panel” does not permit a distinction with the panels and interfaces conventionally used in the art to perform simulations and display information. Specifically, Examiner identifies the following components as conventional: a processor of an author device, a server, instructions running on a computer (e.g., executable code), a display device, a user interface for communications with the server, and embedding executable code in a webpage. Final Act. 11; *see* Ans. 20–21.

In the Final Action, Examiner identifies certain pertinent evidence of record with respect to the conventional components of the presently claimed computer simulation environment. *See* Final Act. 13–14. Specifically,

Examiner cites Fairclough<sup>4</sup> as evidence that a simulation environment containing a simulation engine and an image rendering mechanism was well-understood, routine, and conventional. Fairclough ¶ 72; *see* Final Act. 13; Ans. 21. The simulation environment in Fairclough can “comprise any user interface mechanisms such as menu items, forms, toolbars, etc. as known by ordinarily skilled in the art to provide a user interface to receive user input with regards to configuration.” Fairclough ¶ 67. Liu likewise describes that a server computer typically provides a webpage with an on-screen keypad for data entry. Liu<sup>5</sup> ¶ 3; Final Act. 13; Ans. 21. Chan<sup>6</sup> also evidences that methods “for previewing electronic commerce content in a live electronic commerce environment” were well-understood and routine in the art. Chan, Abstract. Chan explains that most e-commerce sites test changes on a separate server but acknowledges that “it may be easier to preview certain scenarios on a live site, than on a test server, such as promotions based on user data.” Chan ¶ 7; Final Act. 13. Jain<sup>7</sup> similarly describes “[a]n ad test tool [that] allows rich media developers to test ads in both a stand-alone environment and within live web pages.” Jain, Abstract; Final Act. 13. Fisher<sup>8</sup> discloses a “system allows a user to run simulations, utilizing real advertising data, across multiple yield engines to determine which one is the best to use and (optionally) what parameters for that best engine produce optimal results.” Fisher ¶ 12; Final Act. 13–14. Galomb<sup>9</sup>

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<sup>4</sup> Fairclough, US 2006/0176303 A1, published Aug. 10, 2006.

<sup>5</sup> Liu, US 2010/0127987 A1, published May 27, 2010.

<sup>6</sup> Chan et al., US 2007/0179892 A1, published Aug. 2, 2007.

<sup>7</sup> Jain et al., US 2010/0293014 A1, published Nov. 18, 2020.

<sup>8</sup> Fisher, US 2012/0030012 A1, published Feb. 2, 2012.

<sup>9</sup> Galomb, US 2001/0039510 A1, published Nov. 8, 2001.

describes “an advertisement testing method and system that provides a platform and medium structured for advertisers to directly, objectively, instantly, and reliably test, evaluate, and optimize the effectiveness of their advertisements in comparison to competing advertisements.” Galomb ¶ 4; Final Act. 14. Each of the cited references disclose the use of computers and graphic displays for communicating information. Based on these disclosures, we find that Examiner has provided sufficient evidence that the identified components are well-understood and routine in the art and thereby are also conventional in this particular art.

We determine that claim 1 contains no additional elements, other than generic computer elements and routine and conventional concepts such as a “simulation panel,” beyond the abstract idea itself. Using generic computer components to perform abstract ideas does not provide the necessary inventive concept. *See Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.

We conclude that claim 1 is directed to no more than the judicial exceptions to Section 101 and does not recite the “significantly more” requisite to transform the claim into a patent-eligible application. We consequently affirm Examiner’s rejection of claim 1 on this ground, and claims 7, 10, 11, 14, 16, 22, 24, 25, 29, 30, 32, and 33 were not separately argued and fall with claim 1.

*Claims 21, 26, and 27*

Appellant contends that “Examiner failed to provide evidence []sufficient to establish that the additional features of these dependent claims are well-understood, routine or conventional under *Berkheimer*.” Appeal Br.

26. In other words, Appellant contends that embedding executable code in a webpage is unconventional.

We are not persuaded by Appellant's contention that embedding executable code in a webpage transforms the claim into patent-eligible subject matter. We agree with Examiner that the recitation of "the code [being] embedded in the simulated page" is but an alternate way of "receiving or transmitting data over a network, e.g., using the Internet to gather data to perform the simulating or previewing results based on constraints or inputs." Ans. 23; *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 717 (2014) ("Any transformation from the use of computers or the transfer of content between computers is merely what computers do and does not change the analysis."). Accordingly, we affirm the rejection of claims 21, 26, and 27 for the reasons set out by Examiner in the Answer.

*Claims 34 and 36*

Appellant contends that claims 34 and 36 provide a technical improvement wherein the "author device implements [a] selection operation by matching certain interactions to metadata included in simulation content and retrieving the relevant simulation content from a remote server based on the matching." Appeal Br. 11.

According to Examiner "[t]he additional elements of 'from the server' and 'metadata' . . . merely recite (1) adding the words 'apply it' (or an equivalent) with the judicial exception . . . [and are] not indicative of integration into a practical application." Ans. 11–12. We agree with Examiner that selecting a particular type of data from a particular location is not sufficient to transform the abstract idea of organizing human activity into patent-eligible subject matter.

*Claims 35 and 37*

Appellant contends that claims 35 and 37 are patent eligible for being directed to a technical improvement of “the movable simulation panel [that] allows a user to easily navigate between the simulation controls and the resultant simulated website use when evaluating how different parameters will impact the display of the website to an end user.” Appeal Br. 13.

We are not persuaded and agree with Examiner that a display that allows two windows to be open on the same monitor and that are independently movable (*see* claim 1 element B1 and claim 35) are conventional elements that are not sufficient to confer patent eligibility upon the claims. Pop up ads are a conventional example of an online advertising environment where “one interface element overlaid over another interface element (like a webpage) that can be moved independently of the other interface element” and are thereby merely linking these limitations to the “use of the judicial exception to the online advertising environment or field of use.” Ans. 24–25. Accordingly, we affirm the rejection of claims 35 and 37 for the reasons set out by Examiner in the Answer.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 7, 10, 11, 14, 16, 21, 22, 24–27, 29, 30, 32–37	101	Patent eligibility	1, 7, 10, 11, 14, 16, 21, 22, 24–27, 29, 30, 32–37	

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).

AFFIRMED