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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/661,403	03/18/2015	J. Seth Randle	034250-0437781	8710
909	7590	02/26/2020	EXAMINER	
Pillsbury Winthrop Shaw Pittman, LLP			DAGNEW, SABA	
PO Box 10500			ART UNIT	
McLean, VA 22102			PAPER NUMBER	
			3682	
			NOTIFICATION DATE	
			DELIVERY MODE	
			02/26/2020	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte J. SETH RANDLE

Appeal 2019-004416
Application 14/661,403
Technology Center 3600

Before CHARLES N. GREENHUT, JAMES P. CALVE, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

CALVE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the decision of the Examiner to reject claims 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies RetailMeNot, Inc. and Harland Clarke Corp. as the real parties in interest. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claims 1, 6, and 16 are independent. Claim 1 is reproduced below.

1. A method of programmatically administering a game of chance by interfacing an offer distribution system with a consumer mobile device to enter a consumer in the game of chance in exchange for the consumer moving from a mall to a store in the mall seeking consumer visits, the consumer mobile device presenting an alert describing the game of chance in response to detecting that the consumer is in a geofence corresponding to the mall, and the consumer mobile device causing the consumer to be entered in the game of chance in response to detecting that the consumer is within wireless range of a transmitter at the store, the method comprising:

obtaining data defining a multi-stage geolocated offer specifying one or more rewards to be conferred on consumers in exchange for the respective consumers moving from an alert geographic location to a reward geographic location,

wherein the alert geographic location is specified by a geofence defined with one or more geographic coordinates and is a geographic area smaller than 1,000 square kilometers that contains the reward geographic location;

wherein the reward geographic location corresponds to at least a portion of a physical site of a merchant and is specified by an identifier that is encoded in a wireless transmission by a wireless transmitter at the physical site of the merchant, and

wherein the one or more rewards include entry into a game of chance;

sending a consumer mobile device the multi-stage geolocated offer and instructions to alert a consumer to the multi-stage geolocated offer in response to the consumer mobile device detecting that the consumer mobile device is within the alert geographic location;

sending the consumer mobile device instructions to perform steps comprising:

detecting when the consumer mobile device wirelessly receives the identifier that is encoded in the wireless transmission by the wireless transmitter at the physical site of the merchant, and

in response to detecting the identifier, sending an indication that the consumer is within the reward geographic location;

receiving an indication that the consumer is within the reward geographic location;

determining, with a processor, based on the received indication that the consumer is within the reward geographic location, that the consumer qualifies for entry in the game of chance; and

storing in memory data qualifying the consumer for the reward.

REJECTION²

Claims 1–21 are rejected as directed to patent-ineligible subject matter under a judicial exception to 35 U.S.C. § 101.

ANALYSIS

Claims 1–21 Rejected under a Judicial Exception to 35 U.S.C. § 101

Section 101 of the Patent Act defines patent-eligible-subject matter as:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 U.S.C. § 101 (2012). However, “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted).

² The Examiner withdrew the prior art rejections of claims 1–21. Ans. 3; Final Act. 5–22.

To distinguish patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications, we first determine whether the claims are directed to a patent-ineligible concept. *Id.* at 217. If they are, we consider the elements of each claim, individually and as an ordered combination, to determine if additional elements transform the claim into a patent-eligible application, e.g., by providing an “inventive concept” that ensures the patent amounts to significantly more than a patent on the ineligible concept. *Id.* at 217–218.

The USPTO has issued guidance about this framework. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance, to determine whether a claim is “directed to” an abstract idea, we evaluate whether the claim recites (1) any judicial exceptions, including certain groupings of abstract ideas listed in the Revised Guidance (i.e., mathematical concepts, certain methods of organizing human activities 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)). *See* Revised Guidance, 84 Fed. Reg. at 51.

Only if a claim (1) recites a judicial exception *and* (2) does not integrate that exception into a practical application, do we then consider 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. *Id.* at 56.

Step 1: Do the Claims Recite a Statutory Category?

The Examiner finds that independent claims 1 and 6 recite a method, and claim 16 recites a system. *See* Final Act. 2–3. Thus, the claims recite statutory categories of invention of 35 U.S.C. § 101, namely, processes and a machine.

Alice Step 1, Revised Step 2A, Prong One: Are Judicial Exceptions Recited?

Appellant argues independent claims 1, 6, and 16 together and argues dependent claim 4. Appeal Br. 5–16. We select claim 1 as representative of the group (37 C.F.R. § 41.37(c)(1)(iv)) and address claim 4 separately.

The Examiner determines that claim 1 recites “the concept of distributing coupon and other offers [] and, more specifically to multi-stage geolocation offers in sequence of geographic location which corresponds to concepts identified as abstract idea by the court.” Final Act. 3, 23. The Examiner determines that each step of the claimed method recites portions of this abstract idea. *Id.* at 2–3. We agree that claim 1 recites abstract ideas.

Under the Revised Guidance, these steps involve certain methods of organizing human activity including commercial interactions of advertising, marketing, and sales activities. Revised Guidance, 84 Fed. Reg. at 52. The preamble (*see* Appeal Br. 22 (Claims App.)) describes this concept as

administering a game of chance by interfacing an offer distribution system with a consumer mobile device to enter a consumer in the game of chance in exchange for the consumer moving from a mall to a store in the mall seeking consumer visits, the consumer mobile device presenting an alert describing the game of chance in response to detecting that the consumer is in a geofence corresponding to the mall, and the consumer mobile device causing the consumer to be entered in the game of chance in response to detecting that the consumer is within wireless range of a transmitter at the store

This advertising, marketing, and sales concept reflects the idea that applicants have found that the geographic location of consumers relative to a merchant's physical store is useful for targeting consumers. Consumers within a relatively short walking or driving distance to a store (e.g., within a 1,000 square kilometer circular area around the store for driving or within a 1 square kilometer area for walking) are often more likely to respond to an offer by at least visiting the store, if not purchasing goods or services.

Spec. ¶ 15. This concept addresses the problem of merchants with limited budgets targeting offers to consumers most likely to buy goods at the store. *Id.* ¶ 14. Appellant discovered that consumers located close to a physical brick-and-mortar store are more likely to respond to an offer to shop at that store than consumers who are not located proximate to the store. *Id.* ¶ 15.

Claim 1 recites steps that organize this consumer advertising activity by presenting an alert to a consumer's mobile device when the consumer is detected in a "geofence" area that is near a merchant's store in a mall.

The step of "obtaining data defining a multi-stage geolocated offer specifying one or more rewards to be conferred on consumers in exchange for the respective consumers moving from an alert geographic location to a reward geographic location" recites an initial step in this process wherein the offer distribution system receives the advertising offer to administer. This step is used to organize or guide the subsequent steps in the advertising and sales activities. *See* Spec. ¶ 53 (the offer based advertising process begins by obtaining data defining a multi-stage geolocated offer), Fig. 2 (block 58).

Steps of specifying (1) an alert geographic location by a geofence and geographic coordinates and (2) a reward geographic location corresponding to a physical site of a merchant recite further steps of this same abstract idea.

First, consumers are alerted when they are within an “alert geographic location,” i.e., near to a merchant’s physical site such as within a ten minute drive or walk or within 10–15 kilometers. Spec. ¶¶ 16, 17. Then, they are directed to a “reward geographic location” at the store of the merchant who issued the offer. *Id.* ¶ 17. Consumers qualify for a reward in exchange for visiting a merchant’s store. *Id.* The reward can enter consumers in a game of chance such as a sweepstakes. *Id.* This multi-stage geolocated offer thus involves certain methods of organizing consumer activities for commercial advertising, marketing, or sales activity undertaken by a merchant at a store.

The next steps of alerting the consumer to the multi-stage geolocated offer when the consumer mobile device is detected in the alert geographic location and detecting when the device receives an encoded identifier at the physical site of the merchant to indicate that the consumer is in the reward geographic location and the consumer qualifies for entry in the game of chance recite other steps of this advertising, sales, and marketing activity.

Claim 4 depends from claim 1 and recites that the alert geographic location is defined by a geofence, which “includes an interior negative area in which consumers are not alerted to the multi-stage geofenced offer, and wherein the reward geographic location is in the interior negative area.” Appeal Br. 23 (Claims App.). This step recites the same abstract idea.

This step recites the concept that consumers who already are at the merchant’s physical location are not alerted to the offer because they do not need an offer to visit the merchant’s store. Spec. ¶¶ 16, 17. “[C]onsumers already geographically located within a store . . . are often already likely to purchase goods or services even without an offer that would otherwise consume some of the merchant’s budget for offers.” *Id.* ¶ 15.

Appellant argues that “[t]he subject matter to which the claims are alleged to be directed by the Examiner must be shown by the Examiner to be similar to an abstract idea previously identified by the courts.” Appeal Br. 9. Appellant also argues that “there is no similarity between the subject matter to which the claims are alleged to be directed and subject matter in identified court cases holding claims to be directed to an abstract idea.” *Id.* at 9–10.

The 2019 Revised Guidance “extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes the following groupings of subject matter, when recited as such in a claim limitation(s)” . . . (b) Certain methods of organizing human activity . . . commercial or legal interactions (. . . advertising, marketing or sales activities or behaviors . . .).” Revised Guidance, 84 Fed. Reg. at 52; MANUAL OF PATENT EXAMINING PROCEDURE § 2106.04(a)(2) (9th Ed. Rev. 8, Jan. 2018) (courts identify certain methods of organizing human activity as concepts of advertising, marketing, and sales activities).

As discussed above, claim 1 recites concepts of organizing human activity for commercial interactions involving advertising, marketing, and sales activities. Claim 1 recites an abstract idea of sending advertising offers to consumers based on their location. It organizes human activities for the commercial interactions of advertising, marketing, and sales activities by filtering user locations in reference to “a geofence defined with one or more geographic coordinates” and “a physical site of a merchant.” Recited in the abstract, such filtering is an abstract idea. *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“We agree with the district court that filtering content is an abstract idea because it is a longstanding, well-known method of organizing human behavior”).

BASCOM filtered content over the Internet just as the claimed method, filters merchant offers relative to consumer locations over the Internet 24 via offer distribution system 12. *Id.*; see Spec. ¶¶ 31–36, 47.

Furthermore, “[t]he practice of conveying regional content to out-of-region recipients has been employed by nearly every form of media that has a local distribution.” *Affinity Labs of Texas LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (Fed. Cir. 2016). Essentially, the claimed alert provides content (an advertising offer) from a store located away from the location of the consumer. See Spec. ¶ 49; see also *id.* ¶¶ 21–26, 47, 48; *Affinity Labs of Texas LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016) (“we hold that the concept of delivering user-selected media content to portable devices is an abstract idea, as that term is used in the section 101 context.”).

The courts also have held the concept of sending advertisements to consumers based on their location is an abstract idea.

Intellectual Ventures admitted that tailoring content based on the viewer’s location or address would satisfy the “as a function of the user’s personal characteristics” limitation. This sort of information tailoring is “a fundamental . . . practice long prevalent in our system . . .” *Id.* There is no dispute that newspaper inserts had often been tailored based on information known about the customer—for example, a newspaper might advertise based on the customer’s location. Providing this minimal tailoring—e.g., providing different newspaper inserts based upon the location of the individual—is an abstract idea.

Intellectual Ventures I LLC v. Capitol One Bank (USA), 792 F.3d 1363, 1369 (Fed. Cir. 2015); see also *Bridge and Post, Inc. v. Verizon Commc’ns, Inc.*, 778 F. App’x 882, 887 (Fed. Cir. 2019) (“Targeted marketing is a form of ‘tailoring information based on [provided] data,’ which we have previously held is an abstract idea.”) (citation omitted).

In *Bridge and Post*, the patents-in-suit taught that “[t]ailoring advertisements based on real-time information about the user and their location allows a publisher to ‘maximize their advertising revenues.’” *Bridge and Post*, 778 F. App’x at 884. Each of the patents-in-suit taught “tracking a user on a network and serving tailored advertisements.” *Id.* at 885. They also taught that the concept of tailoring advertisements based on user data “dates back at least to local radio and television advertisements, which played only for users located in specific cities.” *Id.* at 884.

The Court reiterated that “as we have previously held, claims related to ‘customizing information based on (1) information known about the user and (2) [specific] data’ are directed to abstract ideas.” *Id.* at 888. *Bridge and Post* illustrates that the abstract idea of organizing human behavior for advertising and other commercial interactions has been used to solve the very problem Appellant highlights in the Specification and its Appeal Brief.

Appellant’s Specification describes the problem as merchants “have a limited budget for conferring benefits on consumers with offers” and “wish to target those benefits to consumers who 1) are likely to respond to the offer by purchasing goods or services from the merchant and 2) but-for the offer would not have purchased the goods or services.” Spec. ¶ 14. Appellant “found that the geographic location of consumers relative to a merchant’s physical store is useful for targeting consumers.” *Id.* ¶ 15; *see* Appeal Br. 7.

Bridge and Post held that targeted advertising to consumers based on a consumer’s location to maximize advertising dollars is an abstract idea.

Claim 4 recites a similar aspect in which the alert geographic location includes “an interior negative area in which consumers are not alerted to the multi-stage geofenced offer.” Appeal Br. 23 (Claims App.).

This feature is another aspect of the abstract idea recited in claim 1. It involves the concept that “consumers already geographically located within a store (or other physical site of a merchant, like a service center) are often already likely to purchase goods or services even without an offer that would otherwise consume some of the merchant's budget for offers.” Spec. ¶ 15. Therefore, “some embodiments are configured to block consumers already at the merchant's physical location from being alerted to the offer.” *Id.* ¶ 16.

Claim 4 recites this abstract idea of organizing human activity for the commercial interaction of advertising activity by blocking a consumer at the merchant’s location from receiving an alert notification. Claim 4 also recites that “the reward geographic location [the physical site of a merchant] is in the interior negative area.” Appeal Br. 23 (Claims App.).

Nor are we persuaded by Appellant’s arguments that claim 1 recites a specific improvement in computer-related technology rather than a mere *result*. Appeal Br. 9–10 (citing *Finjan, Inc. v. Blue Coat Systems, Inc.*, 879 F.3d 1299 (Fed. Cir. 2018)). The abstract “result” in *Finjan* was the *abstract ideas* recited in the “resulting systems.” See *Finjan*, 879 F.3d at 1305.

Similarly, claims in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229 (Fed. Cir. 2016) were *patent-ineligible* because they “d[id] not claim a *particular way of programming or designing the software* . . . but instead merely claim the resulting systems.” *Finjan*, 879 F.3d at 1305 (emphasis added).

The court explained that claims in other cases were determined to be *patent-ineligible* because they placed “no restriction on how the result is accomplished . . . [and] [t]he mechanism . . . is not described.” *Id.* (“there was nothing in the claim ‘directed to *how* to implement [the idea]. Rather, the claim is drawn to the idea itself.’”) (citations omitted).

As discussed in more detail under Prong Two, claims 1 and 4, do not recite a particular way to program or design software, or impose meaningful limitations on how a multi-stage geolocation offer is made. Nor do claims 1 and 4 recite improvements to computers, technology, software design, or software programming as required by *Finjan*. Appeal Br. 6–8.

Appellant argues that the abstract ideas themselves provide a technical improvement. *Id.* It is well-settled that “a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

Ultramercial v. Hulu illustrates that claims to an abstract method of distributing products over the Internet do not become patent-eligible just because they recite abstract process steps instead of a *result*. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (holding “the concept embodied by the majority of the limitations describes only the *abstract idea* of showing an advertisement before delivering free content.”) (emphasis added). A user had to view advertisements to access copyrighted media. *Id.*

Similar to *Ultramercial*’s abstract idea of showing an advertisement before delivering free content, claim 1 recites the abstract idea of showing a user an advertisement as an “alert describing the game of chance” and then delivering free content in the form of a reward to qualify for a game of chance if the user reads the alert and travels to the merchant’s store to claim the reward. Appeal Br. 22–23 (Claims App.); Spec. ¶¶ 17, 21–26, Figs. 1, 2.

Based on the foregoing, we determine that claim 1 recites certain methods of organizing human activity for commercial interactions including advertising, marketing, and sales, which is an abstract idea.

Alice Step 1, Revised Step 2A, Prong Two: Is There an Integration?

We next consider whether claim 1 recites additional elements that integrate the abstract ideas into a practical application. Revised Guidance, 84 Fed. Reg. at 54 (Revised Step 2A, Prong Two).

The Examiner determines that claim 1 does not include any additional elements that are sufficient to amount to significantly more than the judicial exception because the claimed mobile device and wireless store transmitter are recited at high levels of generality to perform generic computer functions used in computer applications. Final Act. 3–4. The Examiner determines that the claims also “fail to recite details of how a solution to a problem or improvement to computer related technology is accomplished.” Ans. 3.

Appellant responds to this determination by contending that the claims address problems with traditional computer systems for geographically targeting offers to mobile computing devices based on sensed geolocation. Such traditional systems suffer from overly-broad distribution of redeemable offers due to relatively-simple logic by which such offers are distributed, generally turning on a single geolocation.

Appeal Br. 7. Appellant also argues that a multi-stage geotargeted offer “alerts users to offers over larger geographic areas and then incentivizes users to smaller, targeted geographic areas where the offers are converted into redeemable offers.” *Id.* at 7–8 (“Computational acts performed by a server and mobile device collectively implement these techniques with specific operations reflected in the claims.”). Appellant further argues that claim 1 is directed to a specific, computer-implemented technique for multi-staged geotargeted offers using an alert and a reward geographic location specified by an encoded identifier in a wireless transmission. *Id.* at 8–9.

First, as discussed above, the claimed alert and reward geographical locations recite abstract ideas in claim 1. Therefore, they cannot provide an additional element to make claim 1 or those abstract ideas patent-eligible. *See BSG*, 899 F.3d at 1290.

Second, it is well-settled that reciting an abstract idea in a physical environment, without more, is insufficient by itself to make the abstract idea patent-eligible. *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) (“Here, in contrast, the focus of the claims is not a physical-realm improvement but an improvement in wholly abstract ideas—the selection and mathematical analysis of information, followed by reporting or display of the results.”).

Without more, the mere physical nature of CGI’s claim elements (*e.g.*, controller, interface, and wireless data transmitter) is not enough to save the claims from abstractness, where the claimed advance is directed to the wireless communication of *status information* using *off-the-shelf technology* for its *intended purpose*.

Chamberlain Grp. v. Techtronic Indus., 935 F.3d 1341, 1348 (Fed. Cir. 2019) (emphasis added) (citation omitted).

Here, the computing system includes one or more processors that may “be any suitable processor capable of executing or otherwise performing instructions,” “execute code,” and “receive instructions and data from a memory.” Spec. ¶¶ 12, 57, Fig. 4. The mobile computing devices may be a cell phone, tablet computer, or computing devices with a portable source of power, location sensor 44, wireless interfaces 46, and user interfaces 48. *Id.* ¶¶ 42–45. The computer may be any combination of devices or software that perform the techniques described in the Specification. *Id.* ¶ 64.

Additional elements of “interfacing” an offer distribution system and a consumer mobile device, presenting an alert on the mobile device when the consumer is detected in a geofence, and detecting when a consumer mobile device receives the encoded identifier in a wireless transmission from the wireless transmitter at a merchant’s physical site are recited generically and perform generic functions that send and receive data.

The merchant’s “wireless transmitter” is a “beacon transmitter 20” that may be plural, spaced transmitters that encircle a mall. Spec. ¶ 47.

Merely encoding an identifier does not make claim 1 patent-eligible. *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017) (“This method reflects standard encoding and decoding, an abstract concept long utilized to transmit information.”). *Bridge and Post* held:

The recited steps of “retrieving a *persistent device identifier*,” “determining” and “retrieving” information associated with the identifier, “analyzing” the information, and “placing directed media” based on that analysis are nothing more than a *computer-implementation of targeted marketing over the Internet*.

Bridge and Post, 778 F. App’x at 887 (emphasis added); *see BSG*, 899 F.3d at 1286 (“claims are not saved from abstraction merely because they recite components more specific than a generic computer.”); *In re TLI Commc’ns LLC Patent Lit. v. AV Automotive, LLC*, 823 F.3d 607, 615 (Fed. Cir. 2016) (holding that the claims were directed to an abstract idea despite the claims’ recitation of telephone units and servers); *Mortg. Grader, Inc. v. First Choice Loan Serv. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (claims reciting an “interface,” “network,” and a “database” are nevertheless directed to an abstract idea).

Any innovation resides in the realm of the abstract ideas recited in claim 1 rather than in a technical improvement to a particular technology that is integral to the claim. The targeted marketing works as expected. It sends targeted alerts to consumers on their mobile phones if the phones are close to the merchant's physical store (within a geofence) and incentivizes the consumer to travel to the store to receive a reward/enter into a game of chance. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea (encoding and decoding) does not render the claim non-abstract.”). *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“a claim for a new abstract idea is still an abstract idea.”); *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (claims that improved an abstract idea, but not a computer's performance, were held unpatentable).

Claim 1 recites a solution to a business issue, namely, how to market more effectively by targeting advertising to users who are located near the store. Spec. ¶¶ 14, 15. Even if we assume that the techniques claimed are “[g]roundbreaking, innovative, or even brilliant,” that is not enough for eligibility. *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013); *accord buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352 (Fed. Cir. 2014). Nor is it enough that a claimed abstract technique is novel and nonobvious over prior art. *SAP Am., Inc.*, 898 F.3d at 1162.

For the foregoing reasons, we determine that claims 1 and 4 do not recite any additional elements that integrate the abstract ideas recited therein into a practical application.

Alice Step 2, Revised Step 2B — Inventive Concept

We next consider whether claims 1 or 4 recite elements, individually, or as an ordered combination, that provide an inventive concept. *Alice*, 573 U.S. at 217–18. The second step of the *Alice* test is satisfied when the claim limitations involve more than performance of well-understood, routine, and conventional activities previously known to the industry. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018) (internal quotations and citation omitted); *see also* Revised Guidance, 84 Fed. Reg. at 56 (explaining that the second step of the *Alice* analysis considers whether a claim adds a specific limitation beyond a judicial exception that is not “well-understood, routine, conventional” activity in the field).

We agree with the Examiner that claims 1 and 4 recite only limitations drawn to what the courts have recognized as well-understood, routine, and conventional computer functions, namely, sending an offer and instructions, detecting information, receiving responses, determining the received information, and storing data. Ans. 3–4. Individually, they recite abstract ideas discussed above and applied on generic components.

USPTO Memorandum of April 19, 2018, “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (Apr. 19, 2018), *available at* <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (*Berkheimer* memo), indicates that the Specification may describe additional elements in a manner that indicates the elements are sufficiently well-known that the specification need not describe their particulars to satisfy 35 U.S.C. § 112(a). *Berkheimer* memo at 3–4. This is just such a case as discussed above. *See* Spec. ¶¶ 12, 39–64, Figs. 1–4.

Nor is there anything unconventional about the “ordered combination” that is not merely the sum of the parts. *See In re TLI Commc’ns Patent Lit.*, 823 F.3d at 615 (holding “recited physical components [that] behave exactly as expected according to their ordinary use,” through “steps that generically spell out what it means to ‘apply it on a telephone network’ also cannot confer patent eligibility”); *Ultramercial, Inc.*, 772 F.3d at 715 (holding that a sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding an ordered sequence of data processing, routing, controlling, and monitoring with conventional technology lacked an inventive concept where it did not specify rules of a communications protocol or signal parameters).

Accordingly, we determine that claims 1 and 4 do not recite elements, individually or as an ordered combination, that provide an inventive concept sufficient to transform their abstract ideas into patent eligible subject matter.

Thus, we sustain the rejection of claims 1–21 as directed to patent-ineligible subject matter under a judicial exception to 35 U.S.C. § 101.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–21	101	Judicial Exception	1–21	

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

AFFIRMED