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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* HANS-FREDERICK BROWN and SHANE MIHELIC-BOOTH

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Appeal 2019-004751  
Application 13/802,027  
Technology Center 3600

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Before ALLEN R. MacDONALD, JAMES B. ARPIN, and  
ADAM J. PYONIN, *Administrative Patent Judges*.

ARPIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's non-final rejection of claims 1–9, 11–24, and 26–30, all of the pending claims. Non-Final Act. 2; *see* Appeal Br. 2.<sup>2</sup> Claims 10 and 25 are cancelled. Non-Final Act. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> “Appellant” here refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party-in-interest as Tapjoy, Inc. Appeal Br. 1.

<sup>2</sup> In this Decision, we refer to Appellant's Appeal Brief (“Appeal Br.,” filed December 5, 2018) and Reply Brief (“Reply Br.,” filed October 10, 2018); the Final Office Action (“Non-Final Act.,” mailed April 5, 2018); the Examiner's Answer (“Ans.,” mailed March 27, 2019); and the originally-filed Specification (“Spec.,” filed March 13, 2013). Rather than repeat the Examiner's findings and determinations and Appellant's contentions in their entirety, we refer to these documents.

## STATEMENT OF THE CASE

Appellant’s claimed methods and computer-readable media “relate[] to the field of delivering online advertisements to computing devices such as mobile computing devices. More particularly, the present disclosure relates to delivering online advertisements in response to mobile application events and techniques for providing rewards in computer games.” Spec. ¶ 1.

As noted above, claims 1–9, 11–24, and 26–30 are pending. Claims 1, 11, 15, 16, 26, and 30 are independent. Appeal Br. 23 (claim 1), 25–28 (claims 11, 15, and 16), 30–32 (claims 26 and 30) (Claims App.). Claims 16, 26, and 30 recite “non-transitory computer-readable medi[a] storing one or more sequences of instructions, which when executed by one or more processors, cause the one or more processors to carry out the steps of” the methods as recited in claims 1, 11, and 15, respectively. *Id.* Claims 2–9 depend directly or indirectly from claim 1, claims 12–14 depend directly from claim 11, claims 17–24 depend directly or indirectly from claim 16, and claims 27–29 depend directly from claim 26. *Id.* at 23–32.

Claim 1, with disputed limitations emphasized, is representative.

1. A data processing method comprising:

using a programmed digital electronic mobile computing device requesting, by a mobile app executing on the mobile device, incentive data from an app server and receiving the incentive data;

*wherein the incentive data comprises first incentive data associating a first app event type with a first incentive frequency value and a first reward type and second incentive data associating a second app event type with a second incentive frequency value and a second reward type, wherein the first app event type is different from the second app event type, and*

*wherein the first reward type is different from the second reward type;*

*wherein the first incentive frequency value and the second incentive frequency value each indicates a ratio of scaffolding events to a number of occurrences of app events of the associated app event type;*

wherein rewards of the first reward type and rewards of the second reward type are related to app events of the associated app event type;

detecting, by an app event logic of the mobile device, an occurrence of an app event of the mobile app, wherein the app event is associated with the first event type;

determining, by the mobile device based on the incentive data, that the particular app event is an incentivized app event;

determining, by the mobile device based on the first incentive frequency value, whether to generate a scaffolding event, *wherein the scaffolding event comprises displaying an advertisement using a display of the mobile device and providing a reward of the first reward type, and wherein the scaffolding event is an event that occurs within the mobile app during execution using the mobile device;*

in response to determining that the scaffolding event should be generated, using the mobile device displaying, on the mobile device, the advertisement and providing the reward.

*Id.* at 23 (emphases added).

## REFERENCES AND REJECTIONS

The Examiner relies upon the following references in rejecting the pending claims:<sup>3</sup>

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<sup>3</sup> All reference citations are to the first named inventor only.

Name	Number	Published	Filed
Anderson	US 2010/0228613 A1	Sept. 9, 2010	Mar. 3, 2009
Prince	US 2011/0258026 A1	Oct. 20, 2011	Apr. 13, 2011

The Examiner rejects claims 1–9, 11–24, and 26–30 under 35 U.S.C. § 101 as directed to patent ineligible subject matter. Non-Final Act. 2–9, 32; *see* Ans. 4–7. The Examiner rejects claims 1–9, 11–24, and 26–30 under 35 U.S.C. § 103(a) as obvious over the combined teachings of Prince and Anderson. Non-Final Act. 9–31, 32–33; *see* Ans. 7–9.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). For the reasons given below, we reverse the rejections of the pending claims.

## ANALYSIS

### I. Patent Eligible Claims

#### A. Section 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus*

*Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”). According to the Court, concepts determined to be abstract ideas and, thus, patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Diamond v. Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diamond v. Diehr*, 450 U.S. 175, 187 (1981). Having said that, the Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws,[]and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* at 191 (citing *Benson* and *Flook*). Nevertheless, the Court noted that “[i]t is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.” *Id.* at 187; *see also BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1352 (Fed. Cir. 2016) (Even if the individual components were known, “an inventive concept can be found in

the ordered combination of claim limitations that transform the abstract idea of filtering content into a particular, *practical application* of that abstract idea.” (emphasis added)).

If the claim is “directed to” an abstract idea, we next “must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

### *B. Office Patent Eligibility Guidance*

In an effort to achieve clarity and consistency in how the Office applies the Court’s two-part framework, the Office published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019).<sup>4</sup> In Step One of our analysis, we look to see whether the claims, as written, fall within one of the four statutory categories identified in § 101. *Id.* at 53 (“Examiners should determine whether a claim satisfies the criteria for subject matter eligibility

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<sup>4</sup> “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. at 51; *see also October 2019 Update: Subject Matter Eligibility*, 2 (Oct. 17, 2019) (“Note, the feedback received was primarily directed to examination procedures and, accordingly, this update focuses on clarifying practice for patent examiners. However, all USPTO personnel are expected to follow the guidance.”).

by evaluating the claim in accordance with the criteria discussed in MPEP<sup>5</sup> § 2106, *i.e.*, whether the claim is to a statutory category (Step 1) and the *Alice/Mayo* test for judicial exceptions (Steps 2A and 2B”).

Under the guidance, we then look to whether the claim recites:

- (1) Step 2A – Prong One: 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) Step 2A – Prong Two: additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)).

*See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. at 54–55 (“Revised Step 2A”).

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

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See id.* at 56 (“*Step 2B: If the Claim Is Directed to a Judicial Exception, Evaluate Whether the Claim Provides an Inventive Concept.*”).

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<sup>5</sup> All Manual of Patent Examining Procedure (“MPEP”) citations herein are to MPEP, Rev. 08.2017, January 2018.

*C. Step One – Claims Directed to Statutory Categories*

Appellant’s independent claims 1, 11, and 15 and their associated dependent claims are directed to methods (i.e., a “process”), and claims 16, 26, and 30 and their associated dependent claims are directed to non-transitory, computer-readable media (i.e., a “manufacture”). Non-Final Act.

2. We agree with the Examiner that the claims recite recognized statutory categories.

*D. Two-Part Alice/Mayo Analysis*

*1. Independent Claims 1, 11, 15, 16, 26, and 30*

*a. Step 2A, Prong One – Claims Recite Abstract Idea*

Applying the first part of the *Alice/Mayo* analysis (Step 2A), the Examiner determines representative claim 1 is “directed to scaffolding based on incentive frequency which is advertising.” Ans. 4; *see* Non-Final Act. 3–4. Thus, the Examiner concludes, “Applicant’s claims are directed to organizing human activity.” Non-Final Act. 32. For the reasons given below, we agree.

The method of claim 1 broadly recites the steps of: (1) detecting the occurrence of an application event on a mobile application (“detecting . . . an occurrence of an app event of the mobile app, wherein the app event is associated with the first event type”); (2) determining that the occurred application event is an incentivized application event (“the message server having a message provider interface logic stored in a memory and operating in a CPU of the message server, wherein the interface logic being used by a message provider for entering commercial messages and for selecting demographic data applicable for each of the entered commercial messages,

and the message server receiving and storing the commercial messages with their associated demographics data in a message database of the database server”); (3) determining whether to generate a scaffolding event, which includes displaying an advertisement *and* providing a reward in the mobile application (“determining . . . based on the first incentive frequency value, whether to generate a scaffolding event, wherein the scaffolding event comprises displaying an advertisement using a display of the mobile device and providing a reward of the first reward type, and wherein the scaffolding event is an event that occurs within the mobile app during execution using the mobile device”); and (4) displaying the advertisement and providing the reward (“in response to determining that the scaffolding event should be generated . . . displaying . . . the advertisement and providing the reward”). Appeal Br. 23 (Claims App.); *see* Non-Final Act. 3. Independent claims 11, 15, 16, 26, and 30 recite substantially similar limitations. Appeal Br. 25–28, 30–32 (Claims App.). As noted above, the Specification explains the claimed inventions relate to “delivering online advertisements to computing devices such as mobile computing devices,” and, in particular, “to delivering online advertisements in response to mobile application events and techniques for providing rewards in computer games.” Spec. ¶ 1; *see Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1272 (Fed. Cir. 2016) (“[The patent] claims the general concept of streaming user-selected content to a portable device. The addition of basic user customization features to the interface does not alter the abstract nature of the claims and does not add an inventive component that renders the claims patentable.”); *Electric Power Grp., LLC v. Alstrom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“[C]ollecting information, analyzing it, and

displaying certain results of the collection and analysis” is not patent eligible.); *see also Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019) (citing *Electric Power Grp.* with approval).

Appellant contends that the Examiner’s characterization of the claimed inventions “is far too abstract in light of *Enfish*[, *LLC v. Microsoft Corp.*, 822 F.3d 1327 (2016),] and does not reflect the inventors’ improvement.” Appeal Br. 7. Nevertheless, in *Enfish*, the Federal Circuit cautioned, “describing the claims at . . . a high level of abstraction *and untethered from the language* of the claims all but ensures that the exceptions to [section] 101 swallow the rule.” *Enfish*, 822 F.3d at 1337, (emphasis added). Here, the Examiner analyzes the claim limitations to identify the recited abstract idea. Non-Final Act. 3.

Further Appellant contends the Examiner fails “to explain how the asserted abstract idea qualifies as a judicially recognized abstract idea.” Appeal Br. 9. In particular, Appellant contends “[t]he current claims do not share the same characteristic that caused the judicially invalidated claims of the cited cases to qualify as an abstract idea.” *Id.* at 9–10. Nevertheless, neither the precedential decisions of the U.S. Supreme Court nor those of our reviewing court nor the Office’s guidelines limit patent ineligible abstract ideas only to those previously identified by the courts. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. at 51–53 (“I. Groupings of Abstract Ideas”).

Claim 1’s limitations, under their broadest reasonable interpretation, recite providing customized or targeted advertisements, such that a mobile device user can see the advertisements, which are fundamental economic practices and “commercial . . . interactions (including . . . sales activities or

behaviors . . .); [and] manag[e] personal behavior or relationships or interactions between people[, e.g., advertisements providers and mobile device users,] (including . . . following rules or instructions).” *See Spec. ¶¶ 1, 16, 17; see also 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. at 52. Such practices and interactions fall within the broader category of “[c]ertain methods of organizing human activity.” *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. at 52. Thus, we determine that the rejected claims recite an abstract idea, namely “[c]ertain methods of organizing human activity.” Non-Final Act. 32; Ans. 4.

*b. Step 2A, Prong Two – Abstract Ideas Integrated Into Practical Application*

The Examiner finds:

The advertiser behavior claimed occurs via app events, “any processing event, step, or programmatic action that may occur during execution of app 202. For example, if app 202 is a game app, an app event may represent a processing event that occurs during execution of app 202 such as a user opening an in-game menu, the user beginning a particular level of the game, or the user ending a current game session.” App event does not impose a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the exception (here there is merely ‘app implemented’ like merely saying an idea is ‘computer implemented’). [The Prong 2 question, i.e., whether there is an integrated practical application,] is answered “NO”.

Ans. 5.

Appellant contends, “[t]he Examiner’s Answer fails to consider whether the claim *as a whole* integrates the judicial exception into a practical application. Instead, the Examiner merely alleges that ‘the

advertiser behavior claimed occurs via app events,’ and summarily concludes that this does not impose a meaningful limit on the judicial exception.” Reply Br. 3–4. In particular, Appellant contends, “[t]he claims recite more than merely advertisement via app events. The claims describe detecting occurrence of specific types of app events and determining whether to generate a scaffolding event based on data received from an app server.” *Id.* at 4. Moreover, Appellant contends:

The practical application includes, for example: requesting, by a mobile app, incentive data from an app server, where the incentive data includes data associating app event types with an incentive frequency value and a reward type, detecting an app event in the mobile app, and in response to a determination that the app event is an incentivized event based on the incentive data and a determination that a scaffolding event should be generated based on the incentive data, displaying an advertisement and providing a reward of a reward type indicated by the incentive data. The claim as a whole therefore integrates the method of organizing human activity into a practical application. Such a specific implementation provides precisely the level of detail that constitutes a “practical application” of the concept at issue.

*Id.* We agree.

As the Office has explained,

the Prong Two analysis considers the claim as a whole. That is, the limitations containing the judicial exception as well as the additional elements in the claim besides the judicial exception need to be evaluated together to determine whether the claim integrates the judicial exception into a practical application. The additional limitations should not be evaluated in a vacuum, completely separate from the recited judicial exception. *Instead, the analysis should take into consideration all the claim limitations and how those limitations interact and impact each other when evaluating whether the exception is integrated into a practical application.*

*October 2019 Update: Subject Matter Eligibility* at 12 (emphasis added); *see Subject Matter Eligibility Examples: Abstract Ideas*, 11 (Jan. 7, 2019) (Example 40).<sup>6</sup> The Examiner, however, focusses almost exclusively on the limitations relating to the “advertiser behavior” and fails to consider all of the claim limitations and how they interact and impact each other. *See* Ans. 5. Thus, we are not persuaded that the Examiner demonstrates that the rejected claims do not integrate the recited judicial exception into a practical application and that the claims are directed to an abstract idea.

Because we are not persuaded that claim 1 or the other independent claims fail to integrate the recited abstract idea into a practical application, we need not consider whether these claims amount to significantly more than the abstract idea. Consequently, we are persuaded that the Examiner erred in determining that these claims are patent ineligible, and we do not sustain that rejection.

*2. Dependent Claims 2–9, 12–14, 17–24, and 27–29*

The Examiner determines that dependent claims 2–9, 12–14, 17–24, and 27–29 also are directed to an abstract idea and fail to recite significantly more than the identified abstract idea. *See* Non-Final Act. 9 (“Claims dependent from the independent claims do not cure the deficiencies and are rejected.”). Appellant does not challenge the patent ineligibility rejection of the dependent claims separately from their base claims, independent claims 1, 11, 16, and 26. Appeal Br. 18; *see* Reply Br. 6. Therefore, on this record

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<sup>6</sup> “The Board decides cases in accordance with the law, not in accordance with hypothetical ‘examples [] intended to be illustrative only.’” *Ex Parte Blythe*, Appeal No. 2017–003176, 2018 WL 3047568, at \*8 (PTAB May 31, 2018) (nonprecedential).

and for the reasons given above, we also do not sustain the patent ineligibility rejection of the dependent claims.

*II. Non-Obviousness Over Prince and Anderson*

*A. Independent Claims 1, 11, 15, 16, 26, and 30*

As noted above, the Examiner rejects representative claim 1 under 35 U.S.C. § 103(a) as obvious over the combined teachings of Prince and Anderson. Non-Final Act. 10–14. With respect to claim 1, the Examiner makes conflicting findings regarding the description of the “incentive data.” Claim 1 recites

the incentive data comprises first incentive data associating a first app event type with a first incentive frequency value and a first reward type and second incentive data associating a second app event type with a second incentive frequency value and a second reward type, wherein the first app event type is different from the second app event type, and wherein the first reward type is different from the second reward type;

wherein the first incentive frequency value and the second incentive frequency value each indicates a ratio of scaffolding events to a number of occurrences of app events of the associated app event type.

Appeal Br. 23 (Claims App.). Initially, the Examiner finds “the claim is to a mobile device receiving data and stops; the rest is descriptive material descriptive of the incentive data, non-functional language.” Non-Final Act. 10. Later, however, the Examiner finds:

Prince shows determining advertising based on a measure of efficiency (CTR ¶ 68, 101, 110) which is what thus incentive frequency is. *Incentive frequency is for doing something based on efficiency.* A ratio of app event to scaffolding is a click-thru rate; the app event is the click and the ‘through’ of click-through is the scaffolding. Prince at least [59, 86] shows providing

selected content to viewer device, displaying the advertisement and providing the reward (para. [0071], [0072][D]). Prince Fig 1, method is performed by one or more computing devices (para. [0061]).

Non-Final Act. 11 (emphasis added); *see* Ans. 7 (citing Prince ¶ 99 (as teaching the incentive frequency)). We disagree with both findings.

Regarding whether incentive data comprising incentive frequency values is non-functional descriptive material, claim 1 recites, “first incentive data associate[es] a first app event type with a first incentive frequency value and a first reward type” and the “first incentive frequency value . . . indicates a ratio of scaffolding events to a number of occurrences of app events of the [first] app event type.” Appeal Br. 23 (Claims App.). Thus, in response to “detecting . . . an occurrence of an app event of the mobile app, wherein the app event is associated with the first event type,” the method proceeds to “determin[e], by the mobile device *based on the first incentive frequency value*, whether to generate a scaffolding event.” *Id.* (emphasis added). We determine that claim 1 recites a *functional* relationship between determination of the incentive frequency value and the determination to generate a scaffolding event, i.e., “displaying an advertisement using a display of the mobile device and providing a reward of the first reward type.” *Id.*; *see* MPEP § 2111.05(I)(A). Accordingly, we are not persuaded that the incentive data comprising the incentive frequency values is non-functional descriptive material.

Further, contrary to the Examiner’s finding, Appellant contends that the incentive frequency value is not merely for ‘doing something based on efficiency.’ The incentive frequency value for a **particular** app event type is a ratio and is used to determine **whether to display an ad and provide a reward when app events of the particular app event type are detected**. This is

clearly not described by a ‘click-thru rate,’ which tracks the ratio of user clicks on an ad after it is displayed to the number of times the ad was displayed.

Appeal Br. 19–20. Prince discloses an advertisement referral incentive system, in which users receive incentives for referring other users or performing other tasks. *Id.* at 20. “Prince describes users being encouraged to view more ads or make referrals (alleged ‘incentive frequency value’), different types of rewards (coupons, promo codes, jackpot entries, etc.), and different types of user actions. However, Prince does not describe data that associates these disparate items.” *Id.* (emphasis added). Referring to Prince’s Paragraph 99, Prince discloses:

*The advertiser may select further options 890, such as creating incentives 900 or limiting dates and/or times 910 and/or the frequency of the ad display. The advertiser may create further incentives for paying attention to the advertisements or further interaction with the user. This may include website links, special offers, bonus money or jackpot entries for further participation, or other offers or interaction beyond the advertisement.*

Prince ¶ 99 (emphases added). However, per Appellant’s contentions, Prince does not teach or suggest that the “frequency” value is a ratio of scaffolding events, i.e., displaying advertisements and providing rewards, to the number of application event types, as recited in claim 1. Appeal Br. 19–20; *see* Reply Br. 6–9.

The Examiner also finds that “Scaffolding as reward and ad display is shown in Anderson ¶ 49–51, display of content plus provide ad and reward [Anderson] ¶ 49 and a rate or ratio [of Anderson] ¶ 17, 67.” Non-Final Act. 13. However, Anderson discloses, “[a]n entertainment system operator may offer a user of the entertainment system rewards for viewing advertisements. The rewards may be an incentive to the user to proactively

view an advertisement, and may be effective to increase a number of consumers who actually view paid advertisements.” Anderson ¶ 17.

Further, Anderson discloses:

*In some embodiments, advertisements may be uniformly valued such that a user earns a same number of credit tokens as a reward for viewing each advertisement (i.e., credit tokens earning rate), either on an advertisement by advertisement basis or on a per unit time of viewing an advertisement basis. In other embodiments, each advertisement may be assigned a unique value or credit tokens earning rate based on a variety of factors. The factors may include digital content such as entertainment programs associated with or viewed in proximity to the advertisement, popularity of the advertisement, payments made by the provider of the advertisement to the entertainment system operator, promotions associated with the advertisement, and other factors as may be known to those skilled in the art of advertising. The credit tokens earnings ratio of a given advertisement may be fixed to be within a range of approximately one to six percent of legal tender revenue (e.g., gross or net of costs associated with transmitting the advertisement) collected by the entertainment system operator associated with distributing or transmitting the advertisement. The earnings ratio may be adjusted by the entertainment system operator and/or the advertiser periodically or dynamically.*

*Id.* ¶ 67 (emphases added). Although Anderson discloses a “credit token earnings ratio,” this is the ratio of “rewards” per advertisement viewings, not the incentive frequency ratio, that is “a ratio of scaffolding events[, i.e., displaying an advertisement *and* providing a reward,] to a number of occurrences of app events of the associated app event type,” as recited in claim 1. Appeal Br. 20–21; *see id.* at 23 (Claims App.).

For the reasons given above, Appellant persuades us that neither Prince nor Anderson teaches or suggests this limitation. Appeal Br. 18–22; *see* Reply Br. 6–9. Moreover, the Examiner does not find that the combined

teachings of Prince and Anderson teach or suggest this limitation. *See* Non-Final Act. 14. Consequently, we are persuaded that the Examiner erred in rejecting independent claim 1, as well as independent claims 11, 15, 16, 26, and 30, as rendered obvious over the combined teachings of Prince and Anderson; and we do not sustain the rejection of those claims.

*B. Dependent Claims 2–9, 12–14, 17–24, and 27–29*

The Examiner determines that dependent claims 2–9, 12–14, 17–24, and 27–29 are rendered obvious over the combined teachings of Prince and Anderson. *See* Non-Final Act. 14–31. Appellant does not challenge the obviousness rejection of the dependent claims separately from their base claims, independent claims 1, 11, 16, and 26. Appeal Br. 22; *see* Reply Br. 9. Therefore, on this record and for the reasons given above, we also do not sustain the obviousness rejection of the dependent claims.

## DECISIONS

1. The Examiner erred in rejecting:
  - a. claims 1–9, 11–24, and 26–30 under 35 U.S.C. § 101, as directed to patent ineligible subject matter;
  - b. claims 1–9, 11–24, and 26–30 under 35 U.S.C. § 103, as obvious over the combined teachings of Prince and Anderson.
2. Thus, on this record, claims 1–9, 11–24, and 26–30 are not unpatentable.

## CONCLUSION

We reverse the Examiner's rejections of claims 1–9, 11–24, and 26–30.

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis/References</b>	<b>Affirmed</b>	<b>Reversed</b>
1-9, 11-24, 26-30	101	Eligibility		1-9, 11-24, 26-30
1-9, 11-24, 26-30	103(a)	Prince, Anderson		1-9, 11-24, 26-30
<b>Overall Outcome</b>				1-9, 11-24, 26-30

REVERSED