



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/258,534	09/07/2016	Steven Hamilton Burris	3937.004	1021
30589	7590	06/26/2020	EXAMINER	
DUNLAP CODDING, P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			YOUNG, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3689	
			NOTIFICATION DATE	DELIVERY MODE
			06/26/2020	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docteting@dunlapcoddng.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* STEVEN HAMILTON BURRIS

---

Appeal 2019-006656  
Application 15/258,534  
Technology Center 3600

---

Before ADAM J. PYONIN, DAVID J. CUTITTA II, and  
PHILLIP A. BENNETT, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the  
Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

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

## STATEMENT OF THE CASE

### *Introduction*

The Application is directed to “making FSBO [(For Sale By Owner)] property listing information more readily available while allowing the seller to leverage the knowledge, skills, and network of a real estate agent to aid in the selling of a property for an agreed upon fee.” Spec. ¶ 4. Claims 1–4, 7–10, and 13 are pending; claims 1, 7, and 13 are independent. Appeal Br. 19. Claim 1 is reproduced below for reference:

1. A method, comprising:

establishing communication between at least one host system having a first processor and a database and a first set of instructions stored in non-transitory computer readable memory, and at least one user device having a second processor, an input device, an output device, a communication device, a second set of instructions stored in non-transitory computer readable memory, and a device locator;

the second set of instructions when executed cause the user device to determine a current location of the at least one user device using the device locator\_ and send the current location to the at least one host system;

upon receiving the current location, the first set of instructions causes the host system to convert the current location to a physical address and access property information from at least one assessor database with the physical address, the property information indicative of at least one property associated with the current location of the at least one user device and send the property information to the at least one user device;

upon receiving the property information, the second set of instructions causes the at least one user device to provide at least one selectable indicator on the output device of the at least one user device associated with the at least one property;

responsive to a first user selecting the indicator associated with the at least one property, the second set of instructions causes the user device to send the first user’s selection to the host system; and,

responsive to receiving the first user's selection, the host system creates a new property listing containing the accessed property information and a listing agent information, the listing agent information being user information associated with the first user, the host system storing the new property listing in the database, wherein the new property listing is a for sale by owner (FSBO) property listing;

receiving, at the at least one host system, a request from a second user to view the new property listing;

responsive to receiving the second user's request, the host system searches the database for the new property listing; and

wherein the host system only makes the new property listing available to the second user if the at least one host system determines that the second user is part of a defined group of users associated with the first user.

#### *References and Rejections*

The Examiner relies on the following prior art:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Raveis	US 2001/0047282 A1	Nov. 29, 2001
Rankin	US 2011/0288962 A1	Nov. 24, 2011
Redstone	US 2012/0047147 A1	Feb. 23, 2012
Thomas	US 2012/0246024 A1	Sep. 27, 2012
Marshall	US 2013/0332372 A1	Dec. 12, 2013

Claims 1–4, 7–10 and 13 are rejected under 35 U.S.C. § 101 as being patent ineligible. Final Act. 2.

Claims 1–2, 7–8 and 13 are rejected under 35 U.S.C. § 103 as being unpatentable over Thomas, Redstone, Desiderio, Marshall, and Raveis. Final Act. 11, 12.

Claims 3, 4, 9, and 10 are rejected under 35 U.S.C. § 103 as being unpatentable over Thomas, Redstone, Desiderio, Marshall, Raveis, and Rankin. Final Act. 36.

## ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We discuss the patent eligibility and obviousness rejections, below, in turn and in light of Appellant’s arguments.

### *Patent Eligibility*

The Examiner determines the claims are patent ineligible under 35 U.S.C. § 101, because the claims “[are] directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.” Final Act. 2 (emphasis omitted); *see Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–218 (2014) (describing the 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.”).

After the mailing of the Final Action—but prior to the mailing of the Answer or the filing of Appellant’s Briefs—the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101 (“Guidance”). *See* 2019 Revised Patent Subject Matter Eligibility Guidance Notice, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Notice”); *see also* USPTO, October 2019 Update: Subject Matter Eligibility (“October Update”) (available at [https://www.uspto.gov/sites/default/files/documents/peg\\_oct\\_2019\\_update.pdf](https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf)). “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” Notice, 84 Fed. Reg. 51; *see also* October Update at 1.

Under the Guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (see MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).<sup>2</sup>

Notice, 84 Fed. Reg. 52–55. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then look, under Step 2B, 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.

Notice, 84 Fed. Reg. 52–56.

We agree with, and adopt as our own, the Examiner’s eligibility analysis. We add the following primarily for emphasis and clarification with respect to the Guidance.

*A. Step 2A, Prong One*

The Examiner determines the claims include an excepted abstract concept, because the claims “recite a process to advertise and market parcels

---

<sup>2</sup> This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. See Notice - Section III(A)(2), 84 Fed. Reg. 54–55.

of land for sale using a generically claimed interface.” Ans. 6. The Examiner has properly analyzed the claim limitations under Prong One of the Guidance: the Examiner has identified the specific limitations in the claim that fall within the subject matter groupings of abstract ideas enumerated in the Guidance, and has provided a reasoned explanation sufficient to support the determination. *See* Ans. 5–7; Notice, 84 Fed. Reg. 54. We find no error in the Examiner’s determination, as the Examiner has reasonably identified limitations of claim 1 (*see* Ans. 5, 6) that are “commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations)” (Notice, 84 Fed. Reg. 52). *See, e.g.*, Spec. ¶ 1 (“Real estate marketing and sales is largely facilitated by real estate agents.”); ¶ 51 (“listing FSBO real estate for sale”).

Accordingly, we agree with the Examiner that the claims recite a judicial exception under Prong One of the Guidance. *See* Final Act. 40; Notice, 84 Fed. Reg. 54; *cf. Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) (“As a general rule, ‘the collection, organization, and display of two sets of information on a generic display device is abstract.’”) (quoting *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1345 (Fed. Cir. 2018)); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1328 (Fed. Cir. 2017) (“Because we agree with the district court that the heart of the claimed invention lies in creating and using an index to search for and retrieve data, we conclude that the claims here are directed to an abstract concept.”); *Move, Inc. v. Real Estate All. Ltd.*, 721 F. App’x 950, 954 (Fed. Cir. 2018) (determining claims recite “the abstract idea of a method for collecting and organizing information about available

real estate properties and displaying this information on a digital map that can be manipulated by the user”) (internal quotations omitted).

As we agree with the Examiner that independent claim 1 recites a judicial exception under Prong One of the Guidance, we continue our analysis under Prong Two. *See* Notice, 84 Fed. Reg. 54; October Update at 10.

*B. Step 2A, Prong Two*

Appellant contends independent claim 1 is eligible for being “directed to a process that is a technical solution to a technical problem.” Appeal Br. 21. According to Appellant, the claim “is specifically directed to the efficient creation and distribution of a new FSBO property listing,” whereas “[a]t the time of the invention, to create a new property listing prior art systems required the user to manually input property information. *Id.*; *see also* Reply Br. 4. Appellant contends claim 1, therefore, “as a whole is a practical application implemented with physical elements that work together to create the new property listing,” and “provides a specific improvement over prior systems, resulting in an improved creation and distribution of new property listings.” Appeal Br. 26, 27; *see also* Reply Br. 6.

We are not persuaded the Examiner errs in determining the additional elements of claim 1 “fail[] to integrate the judicial exception into a practical application because the instant application merely recites words ‘apply it’ (or an equivalent) with the judicial exception or merely includes instructions to implement an abstract idea.” Ans. 7. The alleged “additional elements” that Appellant relies on for arguments under Step 2A, Prong Two are part of the abstract idea as identified by the Examiner. Appeal Br. 25, 26; *see*



Ans. 7–8 (“[T]he additional elements or combination of elements other than the abstract idea itself include the elements such as a ‘computer’ recited at a high level of generality.”), 9 (“Here, the instructions entirely comprise the abstract idea.”). Appellant cannot rely solely on improvements recited by the abstract idea as providing the basis to conclude the abstract idea is integrated into a practical application. *See* Notice, 84 Fed. Reg. 55 n. 24; *Trading Techs. Int’l., Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) (“The abstract idea itself cannot supply the inventive concept, no matter how groundbreaking the advance.”) (internal quotation omitted).

Appellant has not identified additional elements, individually or in combination, that integrate the exception into a practical application. *See* Notice, 84 Fed. Reg. 54, 55. Rather, claim 1 includes additional elements of a “host system” and a “user device,” and we agree with the Examiner the claimed use of these elements “amounts to appending generic computer elements to [an] abstract idea.” Ans. 8; Spec. ¶ 36 (“Embodiments of the system 10 may also be modified to use any user device 14 or future developed devices.”), ¶ 43 (“Each element of the host system 12 may be partially or completely network-based or cloud-based, and may or may not be located in a single physical location.”); Notice, 84 Fed. Reg. 55. For this reason, we agree with the Examiner that claim 1 is directed to an abstract concept pursuant to Step 2A, Prong Two of the Guidance. *See* Ans. 9.

Even if we consider the disputed limitations as additional elements, we disagree with Appellant’s contentions that such limitations remove the claims from the realm of ineligible subject matter. Claim 1, as described by Appellant—that it “enables the use of a device locator to determine an

address of a property<sup>[3]</sup> which is then used to extract accurate property information from an unconventional source<sup>[4]</sup> to quickly and easily create a new property listing” (Reply Br. 3)—recites a process that merely automates steps normally performed by FSBO sellers or realtors. *See* Spec. ¶¶ 1–4; Appeal Br. 21 (“At the time of the invention, to create a new property listing prior art systems required the user to manually input property information.”); Reply Br. 6 (Claim 1 “greatly enhances the technological area so that manual entry of property information is no longer needed.”). The claim limitations do not improve the underlying computer or other technology, or otherwise impose a meaningful limit on the judicial exception. *See* October Update at 11; Ans. 8, 9; *cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“the ability to automate or otherwise make more efficient traditional price-optimization methods . . . is insufficient to render [the] claim patent eligible”); *LendingTree, LLC v. Zillow, Inc.*, 656 F. App’x 991, 996 (Fed. Cir. 2016) (“It is well settled, though, that automating conventional activities using generic technology does not amount to an inventive concept.”); *In re Villena*, 745 F. App’x at 376 (“the basic steps of receiving user input, producing property valuations, and providing display information . . . is a classic case of implementing an abstract idea on a computer”).

---

<sup>3</sup> Separately, we note the claim, in light of the Specification, encompasses a user manually entering an address into a device locator. *See* Spec. ¶ 37 (“implementations of the device locator 23 may include, but are not limited to . . . any future developed system or method); ¶ 53 (“property intake questions of the system 10 may be administered manually”).

<sup>4</sup> We note the claim recites accessing property information from an assessor database, which is a conventional source of property information that may be provided by a government agency. *See* Spec. ¶ 46; Desiderio ¶ 14.

Furthermore, the specificity of claim 1 is insufficient to establish patent eligibility. *Cf. Alice*, 573 U.S. at 222 (alterations in original) (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978)) (“In holding that the process was patent ineligible, we rejected the argument that ‘implement[ing] a principle in some specific fashion’ will ‘automatically fal[l] within the patentable subject matter of § 101.’”). Similarly, any questions on preemption in the instant case have been resolved by the analysis herein and by the Examiner.<sup>5</sup> *See Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (“[W]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the Alice framework, as they are in this case, preemption concerns are fully addressed and made moot.”).

Accordingly, agree with the Examiner that claim 1 does not integrate the judicial exception into a practical application. *See* Ans. 7; Notice, 84 Fed. Reg. 54. As the claim recites a judicial exception and fails to integrate the exception into a practical application, the claim is “directed to the . . . judicial exception.” *Id.* at 54.

*C. Step 2B*

Appellant argues claim 1 “entail[s] an unconventional technological solution,” as “the claim’s determining, converting, and accessing limitations necessarily require [the recited] ‘generic’ components operate in an

---

<sup>5</sup> In any event, we disagree with Appellant that “claim 1 of the present application is narrowly drawn to not preempt.” Appeal Br. 35. Claim 1, consistent with the Specification, is drawn to encompass “future developed” (and currently unknown) techniques, and thus is preemptive. Spec. ¶¶ 36, 37; *see also* Spec. ¶ 32.

unconventional manner to achieve an improvement in computer functionality.” Appeal Br. 33, 34.

We are not persuaded the Examiner errs. As discussed above with respect to Prong Two, we determine that claim 1 does not recite a technological improvement. *See* Final Act. 39. Further, the Examiner reasonably determines that the additional elements recited by independent claim 1—individually and in combination—are well understood, routine, and conventional. *See* Final Act. 9, 10 (citing Spec. ¶¶ 34, 39, 52); Ans. 8–10 (citing Spec. ¶¶ 28, 30, 34); *Alice*, 573 U.S. at 226 (“Nearly every computer will include a ‘communications controller’ and ‘data storage unit’ capable of performing the basic calculation, storage, and transmission functions required by the method claims.”); *see also* Spec. ¶¶ 25, 25–52. In response, Appellant has not persuasively identified additional elements that amount to significantly more than the judicial exception. *See, e.g.*, Appeal Br. 32–36. Thus, we determine the claim limitations, individually and as an ordered combination, do not provide an inventive concept pursuant to Step 2B of the Guidance. *See* Notice, 84 Fed. Reg. 55–56.

We are not persuaded the Examiner errs in determining independent claim 1 is patent ineligible. Appellant does not present additional arguments for the remaining claims. *See* Appeal Br. 19. Accordingly, we sustain the Examiner’s eligibility rejection of claims 1–4, 7–10, and 13.

### *Obviousness*

Appellant argues the Examiner’s rejection is in error, because “the Examiner has proposed a combination that a person of skill in the art would not consider.” Appeal Br. 48. Appellant contends a person of ordinary skill

would not “look to [Thomas’s] system designed specifically to search and access existing [real estate] listings and combine it with [Redstone’s] system specifically designed for creating social media ‘places.’” Appeal Br. 48, 49. Appellant further contends the Examiner’s combination rationale, to “‘dynamically adjust the visibility of places maintained in a geosocial networking system,’ . . . does not apply to a method of creating new property listings as recited in claim 1 of the present application.” *Id.* at 49 (quoting Final Act. 16).

We are persuaded the Examiner’s obviousness rejection is in error. A “patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art,” as “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). The Examiner finds one of ordinary skill would combine the teachings of Thomas, Redstone, Desiderio, Marshall, and Raveis, for “managing real estate information” (Final Act. 22); however, the Examiner’s stated rationale is to improve “a geosocial networking system” (Final Act. 16). We agree with Appellant that the Examiner’s combination does not have sufficient rational underpinning, as the Examiner has not established that managing real estate information would improve a social networking system. Reply Br. 9, 10; *see* Ans. 14 (describing the combination as “related to real property” without discussing Redstone’s social networking system). Thus, the Examiner has not identified a reason that would have prompted a person of ordinary skill in

the relevant field to combine the elements in the way the claimed new invention does.

Without sufficient reasoning, the Examiner’s combination of five disparate references appears to be the result of a hindsight analysis. *See* Ans. 11–14. An obviousness determination cannot rest upon impermissible hindsight reasoning, and to guard against hindsight reasoning the “factfinder should be aware . . . of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.” *KSR*, 550 U.S. at 421. Here, the Examiner’s analysis appears reliant on ex post reasoning, and lacks a rational underpinning to make the combination. Thus, the proffered analysis is insufficient to support the obviousness determination.

We are persuaded the Examiner errs in rejecting independent claim 1 as obvious in view of the cited references. Independent claims 7 and 13 recite similar limitations and are rejected for similar reasons. *See* Final Act. 23–34. Accordingly, we do not sustain the Examiner’s obviousness rejection of independent claims 1, 7, and 13, or the claims dependent thereon.

#### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis/Reference(s)</b>	<b>Affirmed</b>	<b>Reversed</b>
1–4, 7–10, 13	101	Eligibility	1–4, 7–10, 13	
1–2, 7–8, 13	103	Thomas, Redstone, Desiderio, Marshall, Raveis		1–2, 7–8, 13
3, 4, 9, 10	103	Thomas, Redstone, Desiderio,		3, 4, 9, 10

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis/Reference(s)</b>	<b>Affirmed</b>	<b>Reversed</b>
		Marshall, Raveis, Rankin		
<b>Overall Outcome</b>			1-4, 7-10, 13	

The Examiner's decision is affirmed because we have affirmed at least one ground of rejection with respect to each claim. *See* 37 C.F.R. § 41.50(a)(1).

**TIME PERIOD FOR RESPONSE**

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

**AFFIRMED**