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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* MARK DELUN YUAN

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Appeal 2020-000604  
Application 13/966,649  
Technology Center 3600

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Before JAMES A. WORTH, KENNETH G. SCHOPFER, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 2, 5–12, and 15–22, which are all the claims pending in the application, under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as “eBAY Inc.” Appeal Br. 4. We note “JPMORGAN CHASE BANK, N.A.” is the assignee recorded (Feb. 13, 2020) with the USPTO as per reel/frame number 051929/0645.

## BACKGROUND

Appellant's invention is titled "USER-SPECIFIC SEAT RECOMMENDATIONS BASED ON COMMON INTERESTS."

Appellant's "disclosure relates generally to electronic commerce, and more particularly to electronic systems and methods for assisting users in activities relating to purchases and attendance at ticketed events, such as sitting with fellow fans." Spec. ¶ 1.

The Background section of the Specification indicates that global computer networks such as the Internet provide an efficient and cost effective medium for sellers to advertise and offer to sell goods and accept orders from remote purchasers. *Id.* ¶ 2. One example of an electronic commerce marketplace is for tickets online (e.g., sports, concerts, theater and other entertainment events), on which "the ability for individuals to buy and sell tickets online is generally well known." *Id.* ¶ 3.

The problem Appellant identifies in this well-known online ticket marketplace is that "ticket buyers are often not sure of the area where they might be sitting, and whether there would be friendly or hostile fans nearby," which may discourage some from purchasing tickets to attend an event. *Id.* ¶ 4. Appellant's invention purportedly solves this problem by "assist[ing] users in purchasing tickets for ticketed events in a manner that results in a higher likelihood that users will be seated at or near people of similar likes, interests and/or team allegiances." *Id.* ¶ 5.

CLAIMED SUBJECT MATTER

Claims 1, 11, and 21 are the independent claims on appeal and recite substantially similar subject matter. Claim 1, reproduced below with added emphasis, is illustrative of the claimed subject matter. *See Appeal Br., Claims App.*

1. A computer system, comprising:
  - one or more hardware processors configured to execute operations comprising:*
    - directing to be displayed *through a graphical user interface of a client device for a user*, information regarding a ticketed event;
    - determining user information for the user based on a purchase history for the user and user content *from a social networking website of the user*;
    - determining user-defined criteria including a plurality of prioritized preferences for sitting with other attendees of the ticketed event based on one or more attributes of the other attendees, one or more interests of the other attendees, and the ticketed event;
    - accessing attendee information for at least one attendee of the other attendees who has purchased a ticket for the ticketed event, the attendee information identifying at least one attribute and at least one interest of the at least one attendee of the other attendees;
    - determining ticket suggestion information for the user regarding the ticketed event based on the user information, the user-defined criteria, and the attendee information;
    - generating a ticket or seating recommendation based on the ticket suggestion information;
    - communicating the ticket or seating recommendation *to the client device for display through the graphical user interface*; and
    - facilitating a ticket purchase *on the client device* based on the ticket or seating recommendation.

OPINION

Under 35 U.S.C. § 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. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “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.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 78, 79). This is “a search for an ‘inventive concept’ — *i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* at 217–18 (alteration in original) (citation omitted).

In rejecting independent claims 1, 11, and 21 as being directed to a judicial exception without significantly more, the Examiner evaluated the

claims together as a group under the *Alice* framework and the 2019 Revised Guidance.<sup>2</sup> Final Act. 2–6. Appellant also argues claims 1, 11, and 21 as a group. Appeal Br. 7–14. We select independent claim 1 as representative of the group; thus, claims 11 and 21 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv)(2019).

*Statutory Categories under § 101*

To determine subject matter eligibility under 35 U.S.C. § 101, the Examiner must first determine if the claims fall into one of the four statutory categories of invention: processes, machines, manufactures, or composition of matter. *See* MPEP § 2106.03. The Examiner determined, and Appellant agrees, that independent claim 1 is directed to a machine, independent claim 11 is directed to a process, and independent claim 21 is directed to an article of manufacture. Final Act. 2; Appeal Br. 7. Thus, all claims are directed to statutory categories under § 101.

We now turn to the two step *Alice* framework.

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<sup>2</sup> The U.S. Patent and Trademark Office (“USPTO”) published revised guidance for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the “2019 Revised Guidance”). That guidance revised the USPTO’s examination procedure with respect to the first step of the *Alice* framework by (1) “[p]roviding groupings of subject matter that [are] considered an abstract idea”; and (2) “clarifying that a claim is not ‘directed to’ a judicial exception if the judicial exception is integrated into a practical application of that exception.” *Id.* at 50.

*Step One of the Alice Framework (2019 Revised Guidance, Step 2A)  
Step 2A, Prong One*

The first step in the *Alice* framework is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the 2019 Revised Guidance (i.e., Step 2A), is a two-prong test; in Step 2A, Prong One, the Examiner must look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (3) mental processes. 2019 Revised Guidance, 84 Fed. Reg. at 54. If so, the Examiner must next consider whether the claim includes additional elements, beyond the judicial exception, that “integrate the [judicial] exception into a practical application,” i.e., that apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception (Step 2A, Prong Two). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, then the Examiner can conclude that the claim is “directed to” the judicial exception, e.g., an abstract idea.

To that end, the Examiner determines that the following limitations of representative claim 1 recite a judicial exception: “displaying information regarding a ticketed event;” “determining user information for the user based

on a purchase history for the user and user content;”<sup>3</sup> “determining user-defined criteria including a plurality of prioritized preferences for sitting with other attendees of the ticketed event based on one or more attributes of the other attendees, one or more interests of the other attendees, and the ticketed event;” “accessing attendee information for at least one attendee of the other attendees who has purchased a ticket for the ticketed event, the attendee information identifying at least one attribute and at least one interest of the at least one attendee of the other attendees;” “determining ticket suggestion information for the user regarding the ticketed event based on the user information, the user-defined criteria, and the attendee information;” “generating a ticket or seating recommendation based on the ticket suggestion information;” “communicating the ticket or seating recommendation for display;” and “facilitating a ticket purchase based on the ticket or seating recommendation.” Final Act. 3.

According to the Examiner, “the above limitations recite the concept of product (i.e. ticket or seating) recommendation” which “fall within the ‘Certain Methods of Organizing Human Activity’ and ‘Mental Processes’ groupings of abstract ideas, enumerated in the 2019 Revised Subject Matter Eligibility Guidance.” Final Act. 3; Ans. 3. In particular, the Examiner states that these limitations recite a fundamental economic practice and commercial interactions (i.e., advertising and sales activities/behaviors) specified under the 2019 Revised Guidance. Final Act. 3; Ans. 3.

Additionally, the Examiner states that the determining and accessing

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<sup>3</sup> The Examiner modifies the rejection to include the limitation “from a social networking website of the user” as an additional element that is evaluated under Step 2A, Prong Two. *See* Ans. 3.



limitations recite concepts that can be performed in the human mind (i.e., observations/evaluations). Final Act. 3; Ans. 3.

Appellant argues the claims are not concerned with fundamental economic principles or commercial interactions or behavior between people. Appeal Br. 7. According to Appellant, “the claims address determining user preferences from a variety of *electronically stored sources* in order to determine a recommended seat based on the user preferences and other attendees, and enabling the user to purchase the recommended seat on the user’s client device.” *Id.* We are not persuaded.

Appellant’s statement that the claims determine a recommended seat based on user preferences and other attendee information, and enable the user to purchase the recommended seat reflects the concept the Examiner identified as a fundamental economic practice and a commercial interaction involving advertising and sales activities. The limitations in claim 1 recite a commercial interaction between a marketer/seller and a consumer, such that the marketer determines consumer information and criteria and accesses attendee information to determine ticket suggestion information based on the user information and criteria. Based on that determination a ticket or seating recommendation is communicated to a consumer to facilitate a ticket purchase. This activity between a marketer/seller and a consumer to facilitate the sale of tickets is a well-known fundamental economic practice and a commercial interaction in the form of marketing or sales activities or behavior, and therefore an abstract idea. As discussed, Appellant’s disclosure acknowledges that the ability for individuals to buy and sell tickets online is generally well-known. Spec. ¶ 3. Appellant’s solution is using information and criteria from consumers and attendee purchase

information for delivering targeted seating recommendations to increase the likelihood consumers will be seated near people with similar interests, thus, facilitating ticket purchases. *Id.* ¶ 5.

This abstract idea is not meaningfully different from the ideas found to be abstract in other cases before our reviewing court involving methods of organizing human activity. For example, in *Bridge and Post, Inc. v. Verizon Communications, Inc.*, 778 F. App'x 882 (Fed. Cir. 2019), the Federal Circuit held that abstract ideas include tracking a user's computer network activity and using information gained about the user to deliver targeted media, such as advertisements. *See also, e.g., Affinity Labs of Texas, LLC v. Amazon.com, Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (customizing a user interface to have targeted advertising based on user information); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (tailoring information presented to a user based on particular information); *Morsa v. Facebook, Inc.*, 77 F. Supp. 3d 1007, 1013 (C.D. Cal. 2014), *aff'd*, 622 F. App'x 915 (Fed. Cir. 2015) (concluding that targeting advertisements to certain consumers is no more than an abstract idea). In light of these precedents, we conclude that claim 1 equally recites an abstract idea.

Accordingly, we agree with the Examiner that claim 1 recites an abstract idea.

#### *Step 2A, Prong Two*

Having concluded that claim 1 recites a judicial exception, i.e. an abstract idea (Step 2A, Prong One), we next consider whether the claim recites additional elements that integrate the judicial exception into a practical application (Step 2A, Prong Two). 2019 Revised Guidance, 84

Fed. Reg. at 51. When a claim recites a judicial exception and fails to integrate the exception into a practical application, the claim is “directed to” the judicial exception. *Id.* A claim may integrate the judicial exception when, for example, it reflects an improvement to technology or a technical field. *Id.* at 55.

The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

Under Step 2A, Prong Two, the Examiner determines claim 1 recites the additional elements (italicized above): one or more hardware processors, a client device, and a graphical user interface of the client device. Final Act. 4. According to the Examiner, the claims are not integrated into a practical application because these additional elements are recited at a high level of generality and merely invoked as a tool to perform the abstract idea. Final Act. 4; Ans. 3. In support of this position, the Examiner finds that paragraph 55 of Appellant’s Specification specifies that the claimed invention may be implemented using one or more general purpose computers. Final Act. 4. The Examiner states that “[t]he mere addition of the user information being determined from a social networking website generally links the use of the abstract idea to a particular technological environment or field of use (i.e., an

online environment) and, as such, cannot integrate the abstract idea into a practical application.” Ans. 3.

Appellant argues that the claims “improve online ticketing and/or the technical field of recommending a ticket personalized for a specific user, facilitating a purchase and sale of the recommended ticket, and real-time delivery of the ticket.” Appeal Br. 8. According to Appellant, the independent “claims provide an electronically automated approach for gathering information from multiple people, including from various third-party servers.” *Id.* at 9. We are not persuaded by Appellant’s argument.

First, because many of these features are part of the abstract idea, they cannot integrate that into a practical application. Second, Appellant’s argument regarding “real-time delivery of the ticket” and “third-party servers” is not commensurate with the scope of claim 1 and therefore cannot support an integration of the judicial exception. Ans. 4 (The Examiner notes that the claims are silent regarding real-time delivery of the ticket and third-party servers). The patent eligibility of a claim is based on the features recited in the claim. *See ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769–70 (Fed. Cir. 2019) (“Even if ChargePoint’s specification had provided, for example, a technical explanation of how to enable communication over a network for device interaction (which, as discussed above, it did not), the claim language here would not require those details. Instead, the broad claim language would cover any mechanism for implementing network communication on a charging station.”); *Ericsson Inc. v. TCL Commc’ns Tech. Holdings Ltd.*, 955 F.3d 1317, 1325 (Fed. Cir. 2020) (“[T]he specification may be helpful in illuminating what a claim is directed to [but it] must always yield to the claim language when identifying

the ‘true focus of a claim.’”) (citation omitted); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016) (“The § 101 inquiry must focus on the language of the Asserted Claims themselves.”); *Digitech Image Techs., LLC v. Elec. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (“Contrary to Digitech’s argument, nothing in the claim language expressly ties the method to an image processor. The claim generically recites a process of combining two data sets into a device profile.”); *Accenture Global Servs., GmbH v. Guidewire Software*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (“[T]he important inquiry for a § 101 analysis is to look to the claim.”).

Third, we agree with the Examiner that this alleged improvement may reflect an improvement to the abstract idea of recommending an event ticket based on user information and criteria for which a computer is used as a tool in its ordinary capacity, but that does not reflect “an improvement in computer capabilities or computer technology.” Ans. 4. We recognize that “[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can, and sometimes the improvements can be accomplished through either route.” *Enfish*, 822 F.3d at 1335. However, “to be directed to a patent-eligible improvement to computer functionality, the claims must be directed to an improvement to the functionality of the computer or network platform itself.” *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020) (citing *Enfish*, 822 F.3d at 1336–39). Claim 1 recites generic components arranged in no particular way to perform generic functions of displaying, determining, accessing, generating, communicating, and facilitating a purchase without improving computers or networks. The Specification’s description of these

components makes clear that they are generic components that do not improve the functioning of a computer or other technology. *See* Spec. ¶ 49 (“[A] device that includes computer system 200 may comprise a personal computing device (e.g., a smart phone, a computing tablet, a personal computer, laptop, PDA, Bluetooth device, key FOB, badge, etc.) that is capable of communicating with a network.”)); *see also id.* ¶¶ 50–55.

Accordingly, we determine that claim 1 lacks any additional elements sufficient to integrate the abstract idea into a practical application.

*Step Two of the Alice Framework (2019 Revised Guidance, Step 2B)*

We next consider whether claim 1 recites additional 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); *see* Revised Guidance, 84 Fed. Reg. 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).

Appellant argues that “the combination of the steps ‘operates in a non-conventional and non-generic way’ to determine a ticket recommendation for a user based on the user's previous history, the user’s social interactions, and characteristics of other’s attending the same event. This is supported at least by the fact that the Examiner admits that the claims would be novel and non-obvious in light of Sections 102 and 103, if not for the Section 101 rejection.” Appeal Br. 13. We disagree.

We agree with the Examiner that claim 1 lacks additional elements that provide an inventive concept. Final Act. 5–6. As discussed, the additional elements recited in claim 1, i.e., hardware processor, client device, and its graphical user interface are generic computer components (*see* Spec. ¶¶ 49–55) that perform well-understood, routine, or conventional functions of displaying, determining, accessing, generating, communicating, and facilitating a purchase at a high level of generality. In fact, Appellant acknowledges that the ability for individuals to buy and sell tickets online is generally well-known. Spec. ¶ 3. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”); *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ discussed below, those functions can be achieved by any general purpose computer without special programming.”).

As an ordered combination, these additional elements provide no more than when they are considered individually. *Alice*, 573 U.S. at 225. They recite generic computer components that perform well-understood and conventional functions. They are used as tools to implement the judicial exception. *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1169–70 (Fed. Cir. 2018) (limitations of various databases and processors did not improve computers but used already available computers and available functions as tools to execute the claimed process); *Inventor Holdings LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (considering the method steps of the representative claims as an “ordered combination”

reveals that they “amount to ‘nothing significantly more’ than an instruction to apply [an] abstract idea” using generic computer technology).

Moreover, “[t]he ‘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.” *Diamond v. Diehr*, 450 U.S. 175, 188–89, (1981). Even if the steps are groundbreaking, innovative, or brilliant, that is not enough for eligibility. *See Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013); *accord SAP Am.*, 898 F.3d at 1163 (“No matter how much of an advance in the finance field the claims recite, the advance lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm. An advance of that nature is ineligible for patenting.”). “An abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016); *see also Western Express Bancshares v. Green Dot Corp.*, Appeal No. 2020-1079, 2020 WL 3967855, \*3 (Fed. Cir. July 14, 2020) (“But the absence of the exact invention in the prior art does not prove the existence of an inventive concept.”). Therefore, the fact that the Examiner has not rejected the claims under §§ 102 or 103 over the prior art is not determinative of an inventive concept sufficient to make claim 1 patent eligible.

Accordingly, we agree with the Examiner that claim 1 lacks an inventive concept sufficient to transform the abstract idea into patent-eligible subject matter. Thus, we sustain the rejection of independent claim 1 as directed to a judicial exception under 35 U.S.C. § 101, and claims 11 and 21, which fall with claim 1. For the same reasons, we also sustain the rejection



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of dependent claims 2, 5–10, 12, 15–20, and 22, which are not argued separately.

#### CONCLUSION

The rejection of claims 1, 2, 5–12, and 15–22 under 35 U.S.C. § 101 is affirmed.

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 5–12, 15–22	101	Eligibility	1, 2, 5–12, 15–22	

#### 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