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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* RICK A. HAMILTON II, BRIAN M. O’CONNELL,  
CLIFFORD A. PICKOVER, ANNE R. SAND, and KEITH R. WALKER

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Appeal 2020-001041  
Application 14/933,153  
Technology Center 3600

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Before BIBHU R. MOHANTY, ROBERT L. KINDER, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> seeks review under 35 U.S.C. § 134 from the Examiner’s  
final rejection of claims 1–16. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in  
37 C.F.R. § 1.42. Appellant identifies the real party in interest as  
International Business Machines Corporation. (Appeal Br. 2.)

### CLAIMED SUBJECT MATTER

Appellant's "invention generally relates to systems and methods for advertising, and, more particularly, to systems and methods for triggering immersive advertising in a virtual universe." (Spec. ¶ 1.)

Claims 1 and 5 are the independent claims on appeal. Claim 1 is illustrative. It recites:

1. A computer implemented method for providing customized advertising in a virtual universe, comprising:
  - providing, by a host server, a virtual universe (VU) accessible by a first client device of a first user and a second client device of a second user via a network;
  - determining, by the host server, that an action of a first avatar of the first user has triggered a virtual universe advertisement (VU-ad) in the VU;
  - determining, by the host server, that an action of a second avatar of the second user has triggered the VU-ad in the VU;
  - obtaining, by the host server, tolerance data about the first user in response to the first avatar triggering the VU-ad, including a measure of tolerance for advertising and preferred type of advertising selected from the group consisting of:
    - a pop-up graphic, a pop-up text message, a pop-up window displaying an animation, a pop-up window displaying a video, a graphic on a billboard in the VU, a text message on a billboard in the VU, an animation on a billboard in the VU, a video on a billboard in the VU, a machinima on a billboard in the VU, an ad object in the VU configured to be interacted with, an ad avatar in the VU configured to be interacted with, an ephemeral location to which the user avatar is teleported, human operator communication via text message, and human operator communication via voice over internet protocol;
  - obtaining, by the host server, tolerance data about the second user in response to the second avatar triggering the VU-ad, including a measure of tolerance for advertising and preferred type of advertising selected from the group consisting of:

a pop-up graphic, a pop-up text message, a pop-up window displaying an animation, a pop-up window displaying a video, a graphic on a billboard in the VU, a text message on a billboard in the VU, an animation on a billboard in the VU, a video on a billboard in the VU, a machinima on a billboard in the VU, an ad object in the VU configured to be interacted with, an ad avatar in the VU configured to be interacted with, an ephemeral location to which the user avatar is teleported, human operator communication via text message, and human operator communication via voice over internet protocol; automatically selecting, by the host server, a first variation of the VU-ad to be presented to the first user from a plurality of possible VU-ad variations in a look-up table based on the tolerance data about the first user and in response to the first avatar triggering the VU-ad;

automatically selecting, by the host server, a second variation of the VU-ad to be presented to the second user from the plurality of possible VU-ad variations in the look-up table based on the tolerance data about the second user and in response to the second avatar triggering the VU-ad;

automatically presenting the first variation of the VU-ad to the first client device of the first user based on the selecting the first variation; and

automatically presenting the second variation of the VU-ad to the second client device of the second user based on the selecting the first variation,

wherein the first and second variations of the VU-ad are advertisements from a VU-ad provider, and the second variation is different from the first variation.

## REJECTION

Claims 1–16 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

## ANALYSIS

### Claims 1 and 5

“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. Section 101, however, “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

*Alice* applies a two-step framework, earlier set out 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*, 573 U.S. at 217.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* at 218. If the claims are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ ’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, we apply a “directed to” two-prong test to: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] 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.” *See* USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

In this case, the Examiner determines “that claim 1 is directed to a generic computer implemented method for selecting an advertisement in a virtual world, not tied to any specific technology.” (Answer 4.)

Appellant argues “that claim 1 is directed to dynamic customization of advertisements within a virtual universe based on user tolerance data and the triggering of advertisements by an avatar in a virtual universe.” (Appeal Br. 7.)

Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon . . . . Rather, 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.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

*Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant technology] or, instead, on a process that qualifies as an ‘abstract idea’ for

which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* 2019 Guidance at 54–55.

The Specification provides an explanation as to the scope of the claimed invention. In this case, the Specification discloses that the “invention generally relates to systems and methods for advertising, and, more particularly, to systems and methods for triggering immersive advertising in a virtual universe.” (Spec. ¶ 1.) Claim 1 provides further details as to the scope of the claim. Claim 1 recites a “method for providing customized advertising in a virtual universe, comprising: providing . . . a virtual universe (VU),” “determining . . . that an action of a first avatar of the first user has triggered a virtual universe advertisement (VU-ad),” “determining . . . that an action of a second avatar of the second user has triggered the VU-ad,” “obtaining . . . tolerance data about the first user,” “obtaining . . . tolerance data about the second user,” “selecting . . . a first variation of the VU-ad to be presented to the first user,” “selecting . . . a second variation of the VU-ad to be presented to the second user,” “presenting the first variation of the VU-ad to the first client device of the first user,” and “presenting the second variation of the VU-ad to the second client device of the second user.”

In short, claim 1 recites determining that users have triggered an event (analyzing input data), obtaining user data, and using the data to present a targeted advertisement. Analyzing input data, obtaining user data, and presenting customized data have been determined to be directed to an abstract idea. *See Bridge and Post, Inc. v. Verizon Commc’ns, Inc.*, 778 F. App’x 882, 886–87 (Fed. Cir. 2019) (obtaining user information, analyzing the user information, and presenting customized information to the user

based on the analyzed information determined to be directed to an abstract idea), *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359 (Fed. Cir. 2020) (“improv[ing] the abstract idea of delivering targeted advertising using a computer only as a tool . . . is not what the Supreme Court meant by improving the functioning of the computer itself nor is it consistent with [Federal Circuit] precedent applying this concept), *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) (determining that claims providing web pages customized to a user were directed to an abstract idea), *Content Extraction and Transmission LLC v. Well Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (treating as an abstract idea “1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data”).

Appellant argues that “[t]he present invention constitutes an improvement in the technical field of dynamic advertising in virtual environments, and results in the dynamic presentation of ads customized for a user’s tolerance level within a virtual universe.” (Appeal Br. 8.) We do not find this argument persuasive.

The recited steps of claim 1 do not recite technological implementation details for any of the steps. Nor does claim 1 recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting system.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016). Claim 1 does not recite *how* the computer provides a virtual universe, *how* it determines that an action of an avatar triggers a VU-ad, *how* tolerance data about a user is obtained, *how* a variation of the VU-ad is selected, or *how* the VU-ad is presented to the user. Claim 1 merely recites functional results to be achieved by any means.



Additionally, it is clear from Appellant’s Specification that the host server, client devices, and computing network were well known. (*See, e.g.*, Spec. ¶¶ 20–23.) Nor is there any suggestion that Appellant invented virtual universes. (*See id.* ¶ 2.)

In cases involving software innovations, such as we have here, the inquiry as to whether the claims are directed to an abstract idea “often turns on whether the claims focus on ‘the specific asserted improvement in computer capabilities ... or, instead, on a process that qualifies as an “abstract idea” for which computers are invoked merely as a tool.’” *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1303 (Fed. Cir. 2018) (quoting *Enfish, LLC*, 822 F.3d at 1335–36). Here, the asserted improvement is to the information provided, i.e., the customized variation of the VU-ad. The host server, client devices, and computing network are invoked merely as tools. Claim 1 does not recite a specific asserted improvement in computer capabilities.

Appellant argues that “the tolerance data of claim 1 is a new type of information” and that “there is no evidence that automatically presenting different variations of an ad to different users of the same virtual universe based on their individual measure of tolerance for advertising and the triggering of the ad by avatars within the virtual universe, is a long-standing human activity or practice.” (Appeal Br. 10.) This is an argument that the improvement is to the information itself. We do not find this argument persuasive. *See, e.g., BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1288 (Fed. Cir. 2018) (“[A[n] improvement to the information stored by a database is not equivalent to an improvement in the database’s functionality.”). And “[a]s many cases make clear, even if a process of

collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018). The “character of [the] information simply invokes a separate category of abstract ideas.” *Id.* In other words, Appellant’s asserted improvement “lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm.” *Id.* at 1163.

In view of the above, we determine that claim 1 sets forth a method for presenting targeted advertising. Under the 2019 Guidance, “advertising, marketing or sales activities or behaviors” are identified as certain methods of organizing human activity, and thus, an abstract idea. (2019 Guidance at 52.) This is in accord with the Examiner’s determination. (*See* Answer 5.)

Moreover, we do not see how the recitation of a generic host server, client devices, and a computing network, even in conjunction with the recited functions, “ensure[s] ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *See Alice*, 573 U.S. at 221 (second and third brackets in original) (quoting *Mayo*, 566 U.S. at 77.)

Nor do we find any indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record that attributes an improvement in computer technology or functionality to the claimed invention or that otherwise indicates that the claimed invention “appl[ies], rel[ies] on, or use[s] 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.” (See 2019 Guidance at 54–55.)

Thus, under prong one of the two prong test in the 2019 Guidance, claim 1 recites an abstract idea; and, under prong two, additional elements in claim 1 do not “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.” (See 2019 Guidance at 54.) As such, under step one of the *Alice* framework, the claim is directed to an abstract idea, and we move to step two.

Step two of the *Alice* framework has been described “as 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.’” *Alice*, 573 U.S. at 217–18 (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73). Under step two, we examine, *inter alia*, whether a claim element or combination of elements “[a]dds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present.” (2019 Guidance at 56.)

In our analysis under step two of the *Alice* framework, we examine “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field [which] is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

Taking the claim elements separately, the functions performed in claim 1 by the host server, client devices, and computing network are purely

routine and conventional. (*See, e.g.*, Spec. ¶¶ 20–23.) Analyzing input data, obtaining additional data, and presenting results based on the data are routine and conventional functions for a computer and were previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1356 (The claims “do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept.”); *see also 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,’ . . . those functions can be achieved by any general purpose computer without special programming.”).

Considered as an ordered combination, the generic computer components of Appellant’s claimed invention add nothing that is not already present when the limitations are considered separately. For example, claim 1 does not, as discussed above, purport to improve the functioning of the server, client devices, or network themselves. Nor does it effect an improvement in any other technology or technical field. Instead, claim 1 amounts to nothing significantly more than an instruction to apply the abstract idea using generic computer components performing routine computer functions. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

Nonetheless, Appellant seeks to analogize claim 1 to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). Appellant argues that “[c]laim 1 can be understood to address problems of retaining visitors in virtual universes while also presenting those visitors

with customized advertisements.” (Appeal Br. 8.) We do not find this argument persuasive. The claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result — a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258. Appellant does not persuasively argue that the claim steps override or vary some routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.

Moreover, the Federal Circuit has cautioned

that not all claims purporting to address Internet-centric challenges are eligible for patent. For example, in our recently-decided *Ultramercial* opinion, the patentee argued that its claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” [*Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed.Cir.2014).] But this alone could not render its claims patent-eligible. In particular, we found the claims to merely recite the abstract idea of “offering media content in exchange for viewing an advertisement,” along with “routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.” *Id.* at 715-16.

*Id.*

Appellant argues that the claim recites patent-eligible subject matter because it “clearly does not monopolize providing ‘location based offers.’” (Appeal Br. 9.) We do not find this argument persuasive. Preemption is not a separate test. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

In other words, “preemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellant argues that “claim 1 includes limitations that are not well-understood, routine and conventional activity in the field.” (Appeal Br. 11.) For example, Appellant notes the claim limitation “obtaining, by the host server, tolerance data about the first user . . . including a measure of tolerance for advertising and preferred type of advertising selected from the group consisting of: a pop-up graphic, a pop-up text message . . . .” (*Id.* at 11–12.) We do not find this argument persuasive. Obtaining data is routine and conventional activity. *See, e.g., Ultramercial, Inc.*, 772 F.3d at 715. And Appellant does not argue that Appellant invented pop-up graphics or text messages. (*See, e.g., Spec.* ¶¶ 28, 38.) Moreover, 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*, 899 F.3d at 1290.

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1. Independent claim 5 contains similar language and Appellant presents similar arguments. (*See Appeal Br.* 20–26.) For similar reasons, we are not persuaded that the Examiner erred in rejecting claim 5.

#### Claims 2, 4, 7, and 11

Appellant argues claims 2, 4, 7, and 11 together. We select claim 4 as representative. Claims 2, 7, and 11 will stand or fall with claim 4. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 4 recites:

4. The method of claim 1 comprising: providing a first incentive to the first user; and providing a second incentive, different from the first incentive, to the second user.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claims. (Appeal Br. 13.)

The Examiner answers that the claims merely “narrow the abstract idea” and do not disclose a technological improvement. (Answer 7.)

Appellant replies “that such general statements do not properly address the limitations of the claims” and “that claim limitations which constitute improvements to a business process are not precluded from also constituting an improvement to the field of virtual universe (VU) systems under the step 2B analysis. For example, improvements to a computer in *DDR Holdings* addressed the business problem of retaining visitor traffic.” (Reply Br. 7.) We do not find this argument persuasive.

As discussed above, the claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result” and override the conventional sequence of events ordinarily triggered by clicking on a hyperlink. *DDR Holdings*, 773 F.3d at 1258. Appellant does not persuasively argue that the claim steps override or vary some routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Nor does Appellant argue why the Examiner erred in determining that the claims merely “narrow the abstract idea.” (See Answer 7.) We are not persuaded of error.

Claim 3

Claim 3 recites:

3. The method of claim 1, further comprising providing an incentive to at least one of the first user and the second user, wherein providing the incentive changes the measure of tolerance for advertising of the at least one of the first user and the second user to a higher measure of tolerance.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 14.) Appellant further argues that the claim “includes limitations that are significantly more than the abstract idea” and that what the claim recites “is other than what is well-understood, routine and conventional activity in the field.” (*Id.*)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

Claim 3 simply recites providing an incentive to a user. Claim 3 does not recite how the incentive is provided or what constitutes an incentive. The Specification, however, discloses that the incentive may be in the form of, e.g., “promotional codes.” (Spec. ¶ 49.) In other words, the incentive may simply be in the form of information transmitted to the user. Transmitting information to a computer user is routine and conventional activity. *See, e.g., Ultramercial, Inc.*, 772 F.3d at 715. To the extent Appellant’s argument relates to the content of the information, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am., Inc.*, 898 F.3d at 1168. We are not persuaded of error.



Claim 8

Claim 8 recites:

8. The method of claim 1, wherein the tolerance data is obtained from the first user and the second user after the VU-ad is triggered.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 14.) Appellant further argues that “the claim does more than merely apply an abstract idea using a generic computer” because “there is no real-world equivalent to obtaining tolerance data ‘from the first user and the second user after the VU-ad is triggered’” and that this “is other than what is well-understood, routine and conventional activity in the field.” (*Id.* at 15.)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

Claim 8 recites the source and timing for obtaining information. Claim 8 does not recite how the information is obtained. As discussed above, obtaining data is routine and conventional activity. *See, e.g., Ultramercial, Inc.*, 772 F.3d at 715. To the extent Appellant’s argument relates to the content of the data obtained, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am., Inc.*, 898 F.3d at 1168.

With regard to Appellant’s argument that “there is no real-world equivalent” to the recited limitation, we note, as discussed above, that in *DDR Holdings* “the patentee argued that its claims were ‘directed to a specific method of advertising and content distribution that was previously

unknown and never employed on the Internet before.” *DDR Holdings*, 773 F.3d at 1258. But the Federal Circuit did not find that argument persuasive. There, as here, the claim merely recites the abstract idea without reciting “a particular way of programming or designing the software . . . , but instead merely claim[ing] the resulting system.” *Apple, Inc.*, 842 F.3d at 1241. We are not persuaded of error.

Claim 9

Claim 9 recites:

9. The method of claim 1, further comprising teleporting the second avatar to an ephemeral location within the VU, wherein:
  - the first variation of the VU-ad comprises a virtual billboard displaying the VU-ad to the first user; and
  - the second variation of the VU-ad comprises displaying the VU-ad to the second user at the ephemeral location within the VU.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 15.) Appellant further argues that “the claim does more than merely apply an abstract idea using a generic computer” because “there is no real-world equivalent to ‘teleporting the second avatar to an ephemeral location within the VU’” and that the “limitations of claim 9 are directed to improvements in computer functionality.” (*Id.* at 15–16.)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

Claim 9 does not recite how the second avatar is teleported. Claim 9 recites the type of ad presented to the first user and that the ad for the second user will be displayed at the location of the second user’s avatar. Claim 9

does not recite how any of the steps are performed. It does not recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting system.” *Apple, Inc.*, 842 F.3d at 1241.

Claim 9 simply recites functional results to be achieved by any means.

Thus, we do not agree that claim 9 is “directed to improvements in computer functionality.” (See Appeal Br. 16.) And for the reasons discussed above, we do not find persuasive Appellant’s argument that there is no real-world equivalent to the recited limitations. See *DDR Holdings*, 773 F.3d at 1258. We are not persuaded of error.

Claim 10

Claim 10 recites:

10. The method of claim 1, wherein:
  - the first variation of the VU-ad comprises a pop-up message; and
  - the second variation of the VU-ad comprises a VU-ad avatar interacting with the second avatar.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 16.) Appellant further argues that

similar to the patent-eligible claims in *DDR Holdings*, there is no real-world equivalent outside of computer networks to automatically selecting first and second variations of a VU-ad to be presented to respective first and second users from a plurality of possible VU-ad variations based on tolerance data of the users.

(*Id.*)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

As discussed above, the claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result” and override the conventional sequence of events ordinarily triggered by clicking on a hyperlink. *DDR Holdings*, 773 F.3d at 1258. Appellant does not persuasively argue that the claim steps override or vary some routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Nor does Appellant argue why the Examiner erred in determining that the claims merely “narrow the abstract idea.” (*See* Answer 7.) And for the reasons discussed above, we do not find persuasive Appellant’s argument that there is no real-world equivalent to the recited limitations. *See DDR Holdings*, 773 F.3d at 1258. We are not persuaded of error.

Claim 12

Claim 12 recites:

12. The method of claim 1, wherein:
  - the determining that an action of the first avatar of the first user has triggered the VU-ad in the VU comprises determining that the first avatar has interacted with an object in the VU; and
  - the determining that an action of the second avatar of the second user has triggered the VU-ad in the VU comprises determining that the second avatar has interacted with the object in the VU.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 17.) Appellant further argues that

similar to the patent-eligible claims in *DDR Holdings*, there is no real-world equivalent outside of computer networks to “determining that the first avatar has interacted with an object in

the VU” or “determining that the second avatar has interacted with the object in the VU”, and the claim does more than merely apply an abstract idea using a generic computer.

*(Id.)*

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

Claim 12 does not recite how it is determined that an avatar has interacted with an object. It does not recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting system.” *Apple, Inc.*, 842 F.3d at 1241. Claim 12 merely recites functional results to be achieved by any means. Thus, we do not agree that claim 12 is “directed to improvements in computer functionality.” (*See* Appeal Br. 17.) And for the reasons discussed above, we do not find persuasive Appellant’s argument that there is no real-world equivalent to the recited limitations. *See DDR Holdings*, 773 F.3d at 1258. We are not persuaded of error.

### Claim 13

Claim 13 recites:

13. The method of claim 4, wherein at least one of the first and second incentives comprises a virtual reality object placed in a VU inventory of the first or second user.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 18.) Appellant further argues that

similar to the patent-eligible claims in *DDR Holdings*, there is no real-world equivalent outside of computer networks to providing different incentives to first and second users wherein “at least

one of the first and second incentives comprises a virtual reality object placed in a VU inventory of the first or second user.”

(*Id.*)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

As discussed above, the claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result” and override the conventional sequence of events ordinarily triggered by clicking on a hyperlink. *DDR Holdings*, 773 F.3d at 1258. Appellant does not persuasively argue that the claim steps override or vary some routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Nor does Appellant argue why the Examiner erred in determining that the claims merely “narrow the abstract idea.” (*See* Answer 7.) And for the reasons discussed above, we do not find persuasive Appellant’s argument that there is no real-world equivalent to the recited limitations. *See DDR Holdings*, 773 F.3d at 1258. We are not persuaded of error.

#### Claim 14

Claim 14 recites:

14. The method of claim 1, further comprising:
  - offering, by the host server, an incentive to the first user;
  - and
  - adjusting, by the host server, the measure of tolerance for advertising of the first user to a higher measure of tolerance based on the first user accepting the incentive;
  - wherein the automatically selecting the first variation of the VU-ad to be presented to the first user is based on the higher measure of tolerance.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 18.) Appellant further argues that the adjusting limitation in claim 14 recites “other than what is well-understood, routine and conventional activity in the field.” (*Id.* at 18.)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

Claim 14 recites sending information to a user (offering an incentive) and modifying information based on received information (adjusting the measure of tolerance based on user action). Claim 14 does not recite how the information is sent, modified, or received. Sending, modifying, and receiving data are routine and conventional activities. *See, e.g., Ultramercial, Inc.*, 772 F.3d at 714–15, *Intellectual Ventures I LLC*, 792 F.3d at 1369, *Bridge and Post, Inc.*, 778 F. App’x at 886–87. We are not persuaded of error.

### Claim 15

Claim 15 recites:

15. The method of claim 14, wherein the higher measure of tolerance indicates an authorization to teleport the first avatar to another location in the VU where the first variation of the VU-ad is staged, and the automatically presenting the first variation of the VU-ad to the first client device of the first user comprises teleporting the first avatar to the other location where the first variation of the VU-ad is staged.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claim. (Appeal Br. 19.) Appellant further argues that claim 15 recites

“other than what is well-understood, routine and conventional activity in the field.” (*Id.* at 19.) And Appellant argues that “similar to the patent-eligible claims in *DDR Holdings*, there is no real-world equivalent to ‘teleporting the first avatar to the other location where the first variation of the VU-ad is staged.’” (*Id.*)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

Claim 15 provides an explanation as to what is construed as an authorization, i.e., “the higher measure of tolerance indicates an authorization,” and narrows the scope of what constitutes “presenting the first variation of the VU-ad to the first client device of the first user.” Claim 15 does not recite how any step is performed. It does not recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting system.” *Apple, Inc.*, 842 F.3d at 1241. Claim 15 simply recites functional results to be achieved by any means.

As discussed above, the claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result” and override the conventional sequence of events ordinarily triggered by clicking on a hyperlink. *DDR Holdings*, 773 F.3d at 1258. Appellant does not persuasively argue that the claim steps override or vary some routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Nor does Appellant argue why the Examiner erred in determining that the claims merely “narrow the abstract idea.” (*See* Answer 7.) And for the reasons discussed above, we do not find persuasive Appellant’s argument that there is no real-world equivalent to the recited



limitations. *See DDR Holdings*, 773 F.3d at 1258. We are not persuaded of error.

Claim 6 and 16

Claims 6 and 16 depend from independent claim 5. Appellant argues claims 6 and 16 together. (Appeal Br. 26.) We select claim 16 as representative. Claim 6 will stand or fall with claim 16. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 16 recites:

16. The method of claim 5, wherein the tolerance data of the first user includes a numeric value indicating a level of interest the first user has with respect to a subject of the VU-ad, and wherein the automatically altering the VU-ad based on the tolerance data of the first user comprises determining a level of tolerance for the subject VU-ad of the first user based on the numeric value, wherein the VU-ad is altered based on the level of tolerance for the subject of the VU-ad.

Appellant argues that the Examiner failed to present a prima facie case for ineligibility because “the Examiner failed to address the limitations” of the claims. (Appeal Br. 26.) Appellant further argues that claim 16 recites “other than what is well-understood, routine and conventional activity in the field.” (*Id.* at 27.) And Appellant argues that “similar to the patent-eligible claims in *DDR Holdings*, there is no real-world equivalent” to the limitation recited in claim 16. (*Id.*)

The Examiner answers that the claim merely “narrow[s] the abstract idea” and does not disclose a technological improvement. (Answer 7.)

Claim 16 narrows the scope of claim 5, i.e., “the tolerance data of the first user includes a numeric value,” and “automatically altering the VU-ad

based on the tolerance data . . . comprises determining a level of tolerance.” Claim 16 does not recite how any step is performed. It does not recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting system.” *Apple, Inc.*, 842 F.3d at 1241. Claim 16 recites functional results to be achieved by any means.

As discussed above, the claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result” and override the conventional sequence of events ordinarily triggered by clicking on a hyperlink. *DDR Holdings*, 773 F.3d at 1258. Appellant does not persuasively argue that the claim steps override or vary some routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Nor does Appellant argue why the Examiner erred in determining that the claims merely “narrow the abstract idea.” (*See Answer 7.*) And for the reasons discussed above, we do not find persuasive Appellant’s argument that there is no real-world equivalent to the recited limitations. *See DDR Holdings*, 773 F.3d at 1258. We are not persuaded of error.

### Summary

In view of the above, we are not persuaded that the Examiner erred in rejecting claims 1–16.

Appellant’s other arguments have been considered but are not persuasive.

CONCLUSION

The Examiner's rejection of claims 1–16 under 35 U.S.C. § 101 is affirmed.

Specifically:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–16	101	Eligibility	1–16	

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