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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEVIN W. HALL, STEPHEN M. LEONARD,
REBECCA E. LUTZ, and TODD D. ROBINSON

Appeal 2020-001168
Application 14/945,494
Technology Center 3600

Before BRADLEY W. BAUMEISTER, GREGG I. ANDERSON, and
NABEEL U. KHAN, *Administrative Patent Judges*.

KHAN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–4 and 6–22, which constitute all the claims pending in this application. Claim 5 has been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Pursuant to our authority under 37 C.F.R. § 41.50(b), we set forth a new ground of rejection for independent claims 1–4 and 6–22.

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

CLAIMED SUBJECT MATTER

Appellant describes the claimed subject matter as follows:

A computer-implemented method includes: receiving, by a computing device, sensor data relating to the attributes of garment worn by a user; determining, by the computing device, the attributes of the garment based on receiving the sensor data; determining, by the computing device, the user's shopping interest based on determining the attributes of the garment; generating, by the computing device, a targeted advertisement based on the user's shopping interest; and outputting, by the computing device, the targeted advertisement for display at a merchant facility.

Spec., Abstr.

Claim 1 is reproduced below:

1. A computer-implemented method comprising:
 - receiving, by a computing device, sensor data relating to attributes of a garment worn by a user, the sensor data including image data of images of the user;
 - determining, by the computing device, the attributes of the garment based on receiving the sensor data;
 - determining, by the computing device, the user's shopping interest based on determining the attributes of the garment;
 - generating, by the computing device, a targeted advertisement based on the user's shopping interest, wherein the generating the targeted advertisement includes selecting particular merchandise to advertise based on a scoring technique that scores the particular merchandise using weights that weigh the attributes differently, wherein the weights relate to a measure of similarity between the attributes of the garment worn by the user and attributes of the particular merchandise; and
 - outputting, by the computing device, the targeted advertisement for display on to a digital exterior sign at a merchant facility and viewable by the user as the user approaches the merchant facility,

wherein the determining the attributes of the garment includes determining the attributes of the garment using image classification or image processing techniques based on the image data.

REFERENCES

The Examiner relies upon the following prior art:

Name	Reference	Date
Hoblit	US 2003/0236702 A1	Dec. 25, 2003
Cypher et al. (“Cypher”)	US 2015/0262230 A1	Sept. 17, 2015
Ghani et al. (“Ghani”)	US 2010/0153187 A1	June 17, 2010
Suzuki	US 6,313,745 B1	Nov. 6, 2001
Hugron et al. (“Hugron”)	US 2005/0108094 A1	May 19, 2005

REJECTIONS²

1. Claims 1–4, 6, 11–19, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Hoblit, Cypher, and Ghani. Final Act. 2–5.
2. Claims 7, 8, and 10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Hoblit, Cypher, Ghani, and Suzuki. Final Act. 5.
3. Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Hoblit, Cypher, Ghani, Suzuki, and Hugron. Final Act. 6.

OPINION

Claim 1 recites, in relevant part, “selecting particular merchandise to advertise based on a scoring technique that scores the particular merchandise using weights that weigh the attributes differently, wherein the weights relate to a measure of similarity between the attributes of the garment worn

² The Examiner withdrew the 35 U.S.C. § 101 patent eligibility rejection of claims 1–3, 5–13 and 15–22. *See* Ans. 2, 3.

by the user and attributes of the particular merchandise.” The Examiner relies on Ghani as teaching the aforementioned claim limitation. Final Act. 3 (citing Ghani, Abstract, ¶¶ 24, 27, 47, 48, Tables 1–3, emphasis omitted). Specifically, the Examiner finds that “Ghani teaches multiple examples of weights” including those found in Table 3 of Ghani where “Sportiness is given a value of 5, which is high, and Trendiness is given a value of 1, which is low.” Ans. 4. The Examiner finds that “[t]his means that Sportiness is a more important attribute than Trendiness.” Ans. 4.

Appellant argues, “Ghani fails to teach or suggest any scoring technique, much less a scoring technique that weighs attributes differently.” Appeal Br. 6. Appellant acknowledges that Ghani discusses weights, but argues these weights “relate to whether a word belongs to (or is in the top 10 of) a particular attribute (for example, ‘lauren’ in Brand Appeal).” Appeal Br. 7; *see also* Reply Br. 4 (“the weights mentioned in Ghani are weights applied to the words (for example, ‘lauren, and ‘ralph’) that are associated with a particular attribute (for example, ‘Conservative’) in Table 3 (reproduced above), not the attributes themselves.”). Appellant contends that these “weights are not related to ‘a measure of similarity between the attributes of the garment worn by the user and attributes of the particular merchandise’, as recited in claim 1.” Appeal Br. 7.

We are persuaded by Appellant’s argument. Ghani discloses a system and method for determining the attributes of a product based on a description of the product. Ghani, Abstract, ¶ 2. Ghani creates a statistical model that “comprises a set of probabilities expressing the likelihood that a given word will occur for a given attribute.” Ghani ¶ 24. Some words in a product description indicate a high probability that the product has a

particular attribute, while others indicate a low probability of the attribute.

Table 3 of Ghani, reproduced below, illustrates this concept.

TABLE 3

Attribute/Attribute Value	Word
Brand Appeal = 5 (high)	lauren, ralph, dkny, Kenneth, cole, imported
Conservative = 5 (high)	lauren, ralph, breasted, seasonless, trouser, jones, sport, classic, blazer
Conservative = 1 (low)	rose, special, leopard, chemise, straps, flirty, spray, silk, platform
Formality = Informal	jean, tommy, jeans, denim, sweater, pocket, neck, tee, hilfiger
Formality = Somewhat Formal	jacket, fully, button, skirt, lines, york, seam, crepe, leather
Age Group = Juniors	jrs, dkny, jeans, tee, collegiate, logo, tommy, polo, short, sneaker
Functionality = Loungewear	chemise, silk, kimono, calvin, klein, august, lounge, hilfiger, robe, gown
Functionality = Partywear	rock, dress, sateen, length:, skirt, shirtdress, open, platform, plaid, flower
Sportiness = 5 (high)	sneaker, camp, base, rubber, sole, white, miraclesuit, athletic, nylon, mesh
Trendiness = 1 (low)	lauren, seasonless, breasted, trouser, pocket, carefree, ralph, blazer, button

Table 3 provides an exemplary list of words having high weights for the attribute values shown.

Table 3 indicates that words such as “sneaker,” “camp,” and “athletic,” in a product description indicate that the product has a high Sportiness attribute, while words such as “lauren,” “seasonless,” “trouser,” and “blazer” indicate a low Trendiness attribute. These words have high or low weights because they have a strong or weak tendency to show the particular attribute. *See Ghani ¶ 24* (explaining that the words listed for an attribute are the “top 10 words” of all the words that may indicate an attribute of a piece of apparel).

Appellant is therefore correct that the reference to “weighted log-odds-ratio” in Ghani applies to the words themselves, not to the product’s attributes. Appeal Br. 7.

Likewise, the Examiner is incorrect that Table 3 shows that Sportiness is more important than Trendiness. Table 3 does not show weights or importance of attributes. Rather, as explained above, Table 3 shows which words in an apparel's description have a strong or weak tendency to show a particular attribute of that apparel. The weights are used to determine the attributes of the garments, rather than measuring the similarity between garments.

In addition to relying on Table 3 of Ghani, the Examiner relies on paragraphs 47 and 48 as teaching the claimed scoring technique with weights. Final Act. 3; Ans. 5. Ghani explains that when recommending apparel, the "recommender technique" of Ghani compares the attribute values of products with a target set of attributes. Ghani ¶ 46. "[T]he resulting comparison 608 indicates the degree of similarity between the target set 604 and the set of attribute values 602 currently under consideration." Ghani ¶ 48. Ghani then recommends only those products having comparison results that meet a certain criteria, such as a comparison result of greater than 70%. Ghani ¶ 46. From this description, the Examiner finds "the attributes are weighted, and this section [of Ghani] details how those weights 'relate to' a measure of similarity between the attributes of the word and unworn garments." Ans. 5.

We disagree. As explained above, the attributes of the product are determined by the words used in their product description. Strongly weighted words indicate high likelihood of that attribute. Once the attributes of the products are determined, a comparison between the attributes of a particular product and a target product is calculated and a match is selected if the comparison passes a certain threshold. Ghani ¶ 48. While this

description may teach a scoring technique for determining a similarity between attributes of sets of garments, this does not teach that the attributes are weighted to calculate those scores. The weights the Examiner relies upon are, as explained above, weights for the words used for determining the attributes of the merchandise, not the weights of attributes for determining the similarity between garments for purposes of targeted advertisement.³

Accordingly, we do not sustain the Examiner's rejection of independent claim 1 and independent claims 16 and 19, which were rejected on the same basis. *See* Final Act. 3. For the same reasons, we do not sustain the Examiner's rejection of claims 2–4, 6–15, 17, 18, and 20–22, which depend from one of claims 1, 16, and 19.

NEW GROUND OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b), we set forth a new ground of rejection for independent claims 1, 16, and 19 as being directed to a judicial exception to patentable-eligible subject matter.

Legal Principles

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract

³ Because the Examiner erroneously finds the weights of Ghani as being directed to the attributes of a product rather than the words used to describe the product, there is no finding as to whether Ghani's disclosure would teach one of ordinary skill in the art that weights could similarly be applied to a product's attributes when measuring the similarity between products.

ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a

mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77).

“[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).⁴ “All USPTO personnel are, as a matter of

⁴ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance.

internal agency management, expected to follow the guidance.” *Id.* at 51;
see also October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, 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) (“Prong One of Step 2A”); 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)) (“Prong Two of Step 2A”).⁵

2019 Revised Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we 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.

2019 Revised Guidance, 84 Fed. Reg. at 52–56.

USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

⁵ 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* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

CLAIMS 1, 16, AND 19

Step 1

In Step 1, we determine whether the claims are directed to a statutory category. Claims 1, 16 and 19 recite a “computer implemented method,” “[a] computer program product comprising a computer readable storage medium,” and “[a] system” respectively. The Specification explains that “computer readable storage medium, as used herein, is not to be construed as being transitory signals *per se*, such as radio waves or other freely propagating electromagnetic waves, electromagnetic waves propagating through a waveguide or other transmission media (e.g., light pulses passing through a fiber-optic cable), or electrical signals transmitted through a wire.” Spec. ¶ 25.

We determine that each of these claims is directed to a statutory category. This includes claim 16, which recites the “computer readable storage medium.” Typically, “computer readable storage medium” encompasses transitory signals and therefore would be considered to be directed to a non-statutory category. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1859–62 (PTAB 2013) (precedential) (holding claims directed to “machine-readable storage medium” ineligible under § 101 because that term encompasses transitory media) (citing *In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007)). However, here Appellant has explicitly excluded transitory signals from the scope of the claims.

Accordingly, we find claim 16, along with claims 1 and 19 are directed to statutory category. We turn next to Step 2A of the 2019 Revised Guidance.

Prong One of Step 2A

Under prong one of step 2A, we first look to whether the claim recites any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities, or mental processes). 2019 Revised Guidance, 84 Fed. Reg. at 52–54.

We start by analyzing the limitations of claim 1 to determine whether any recite an abstract idea. Claim 1 recites “receiving . . . sensor data relating to attributes of a garment worn by a user, the sensor data including image data of images of the user; determining . . . the attributes of the garment based on receiving the sensor data; determining . . . the user’s shopping interest based on determining the attributes of the garment.”

Claim 1 clarifies that “determining the attributes of the garment includes determining the attributes of the garment using image classification or image processing techniques based on the image data.” The Specification explains that cameras and sensors capture images of the user’s garment as the user approaches a merchant facility and that these images are then used to determine attributes of the garments, such as “brand, color, size, type, materials, patterns, production date, text/images printed on the garment, etc.” Spec. ¶ 15. The Specification further explains that the attributes of the garments may be used to determine the user’s shopping interests, which could be, for example, garments with similar attributes. Spec. ¶ 21. The Specification does not provide many details about how image processing or image classification is used to determine the attributes of the garments, other than to say that the cameras and sensors “may be used to visually measure and identify attributes of garments” such as the color, pattern, or proportions. Spec. ¶ 20.

As claimed, and as described in the Specification, these limitations may be performed in the human mind either by viewing the images of the user captured by the sensors and cameras, or by viewing the users themselves as they walk into a merchant's store, to determine the brand, color, and type of garments being worn and then determining the shopping interests of the user based on the garments being worn. For example, if a user walks to a merchant facility wearing blue clothing of a particular brand, a human could determine these attributes and also determine that the user may be interested in other blue clothing of the same brand.

Claim 1 further recites "generating, by the computing device, a targeted advertisement based on the user's shopping interest." Advertising is a commercial interaction and is identified in the 2019 Revised Guidance as a certain method of organizing human activity. 84 Fed. Reg. at 52.

The claim further recites that generating this targeted advertisement "includes selecting particular merchandise to advertise based on a scoring technique that scores the particular merchandise using weights that weigh the attributes differently, wherein the weights relate to a measure of similarity between the attributes of the garment worn by the user and attributes of the particular merchandise." This limitation essentially requires selecting garments in the store inventory that are similar to the garments being worn. The selection is done by comparing the attributes of the garments being worn to the attributes of the garments in inventory and calculating a score of the similarity while weighing certain attributes differently than others. Carrying forward the example of the user wearing blue clothing of a certain brand, a human could weigh the brand as more important than the color of the clothing in selecting additional clothes to

advertise to the user. A human could calculate the similarity score simply by allotting more points to the brand of the clothing than to the color of the clothing. These are all steps that can be performed mentally.

Finally, claim 1 further recites “outputting . . . the targeted advertisement for display on to a digital exterior sign at a merchant facility and viewable by the user as the user approaches the merchant facility.” Outputting a targeted advertisement on a display relates to the commercial activity of advertising, which we explained is a certain method of organizing human activity.

Having reviewed claim 1, we determine it recites a certain method of human activity, in the form of targeted advertising, that also includes various mental processes. Both certain methods of human activities, and mental processes, are categories of abstract ideas under the 2019 Revised Guidance. 84 Fed. Reg. at 52–53. Furthermore, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp*, 855 F.3d at 1327 (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also Fair Warning IP*, 839 F.3d at 1093-94 (determining the pending claims were directed to a combination of abstract ideas). Thus, the patentability analysis in this Appeal does not turn on exactly how various limitations are characterized as being abstract, i.e., as either an abstract “mental processes” or “certain methods of organizing human activity.” Accordingly, for the reasons discussed above, because claim 1 recites certain methods of organizing human activity (e.g., advertising) and mental processes, both of which are considered to be abstract ideas, claim 1 recites an abstract idea.

Independent claims 16 and 19 recite similar limitations with the addition of outputting the user's shopping interests and the selected merchandise "to an admin device associated with shopping personnel of a merchant facility." Because claims 16 and 19 recite similar limitations, we determine claims 16 and 19 recite an abstract idea for the same reasons as explained above with respect to claim 1.

Prong Two of Step 2A

Under prong two of step 2A of the Guidance we determine whether the claim as whole integrates the recited abstract idea into a practical application of the abstract idea. A claim that integrates a judicial exception into a practical application will 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. To evaluate whether the claims integrate the abstract idea into a practical application, we identify whether there are any additional elements recited beyond the abstract idea, and evaluate those additional elements individually and in combination.

Some exemplary considerations laid out by the Supreme Court and the Federal Circuit indicative that an additional element integrates an abstract idea into a practical application include (i) an improvement in the functioning of a computer or to another technological field, (ii) an application of the judicial exception with, or by use of, a particular machine, (iii) a transformation or reduction of a particular article to a different state or thing, or (iv) a use of the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* MPEP § 2106.05(a)–(c), (e)–(h).

Reviewing claim 1 as a whole, we note that nearly every limitation was identified as reciting an abstract idea, except for the recited “computing device.” The computing device, however, is described in the Specification as “a general purpose computer, special purpose computer, or other programmable data processing apparatus to produce a machine, such that the instructions, which execute via the processor of the computer or other programmable data processing apparatus, create means for implementing the functions/acts specified in the flowchart and/or block diagram block or blocks.” Spec. ¶ 29.

Further, when describing the cloud computing embodiment, the Specification states:

In cloud computing node 10 there is a computer system/server 12, which is operational with numerous other general purpose or special purpose computing system environments or configurations. Examples of well-known computing systems, environments, and/or configurations that may be suitable for use with computer system/server 12 include, but are not limited to, personal computer systems, server computer systems, thin clients, thick clients, hand-held or laptop devices, multiprocessor systems, microprocessor-based systems, set top boxes, programmable consumer electronics, network PCs, minicomputer systems, mainframe computer systems, and distributed cloud computing environments that include any of the above systems or devices, and the like.

Spec. ¶ 51.

The computing device of claim 1 is described at a high level, and neither the claims nor the Specification indicates any improvement to the functionality of the computing device. Instead, the computing device merely ties the claimed method to a technological environment and is used simply to implement the abstract idea of the claimed targeted advertising.

As stated above, claims 16 and 19 recite similar limitations, but also recite “an admin device.” The Specification explains that the

admin device 250 may include a computing device or a user device (e.g., a tablet, smartphone, laptop, etc.) that receives information regarding a user’s shopping interests from the data analytics and processing server 230, and displays the information regarding a user’s shopping interests. Sales personnel may use the displayed information to better serve or assist a user when the user enters the merchant’s facility.

Spec. ¶ 78. As with the claimed computing device, the admin device is described at a general level which does not indicate an improvement to the functioning of a computer.

Having reviewed the limitations of claims 1, 16, and 19 individually, and as an ordered combination, we determine they do not include additional elements that integrate the recited abstract idea into a practical application. We move next to Step 2B.

Step 2B

Under step 2B of the Guidance we analyze the claims to determine whether they provide an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself). Considerations that are evaluated with respect to step 2B include determining whether the claims as a whole add a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field.

As we explained above, nearly every limitation of claim 1 recites an abstract idea with the exception of the computing device. The computing device, however, is described as “well-known.” Spec. ¶ 51. Examples of the computing device include “personal computer systems, server computer

systems, thin clients, thick clients, hand-held or laptop devices, multiprocessor systems, microprocessor-based systems, set top boxes, programmable consumer electronics, network PCs, minicomputer systems, mainframe computer systems, and distributed cloud computing environments that include any of the above systems or devices, and the like.” Spec. ¶ 51. The “admin device” of claims 16 and 19 is similarly described as including well-known devices such as a “tablet, smartphone, laptop, etc.” Spec. ¶ 78. These claimed devices are well-understood, routine and conventional. We, therefore, determine that claims 1, 16, and 19 do not add limitations that are anything more than well-understood, routine, or conventional.

Conclusion

Accordingly, we reject independent claims 1, 16, and 19 under 35 U.S.C. § 101 as directed to a judicial exception to patent-eligible subject matter.

CLAIMS 2 AND 3

Claims 2 and 3 depend from claim 1. Claim 2 recites “wherein the sensor data is received from a wearable computing device associated with the user as the user approaches the merchant facility.” Claim 3 recites “wherein the wearable computing device is embedded in the garment.” Because claims 2 and 3 depend from claim 1, the analysis under Step 1, and Prong One of Step 2A remain the same as for claim 1. Under Prong 2 of Step 2A and Step 2B of the 2019 Revised Guidance we determine that the recited “wearable computing device” does not integrate the abstract idea of

the recited targeted advertising into a practical application and that it also does not amount to an inventive concept.

The wearable computing device is described in the Specification as an embedded chip having radio communications hardware, such as an RFID chip, that stores and transmits an identifier of the garment and its attributes. Spec. ¶¶ 15, 19, 74, 81, Fig. 6. RFID chips are well known elements in the art that are used to transmit information over a short range. This is just as they are described in the Specification. *See id.* Nothing in the Specification indicates an improvement in RFID technology or other computer technology. Instead the RFID chips are used in their routine and conventional manner to transmit the attributes of the garments worn by the user to the computing device which then identifies other garments to advertise to the user.

Accordingly, we rejection claims 2 and 3 as directed to a judicial exception to patentable subject matter.

CLAIMS 4, 6–15, 17, 18, AND 20–22

The remaining dependent claims merely recite further details of the targeted advertising or mental process activities recited in the independent claims. Accordingly, we reject claims 4, 6–15, 17, 18, and 20–22 for the same reasons as their respective independent claims.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed	New Ground
1-4, 6, 11-19, 21, 22	103	Hoblit, Cypher, and Ghani		1-4, 6, 11-19, 21, 22	
7, 8, 10	103	Hoblit, Cypher, Ghani, and Suzuki		7, 8, 10	
9, 20	103	Hoblit, Cypher, Ghani, and Suzuki, and Hugron		9, 20	
1-4, 6-22	101	Eligibility			1-4, 6-22
Overall Outcome				1-4, 6-22	1-4, 6-22

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

Appeal 2020-001168
Application 14/945,494

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

REVERSED
37 C.F.R. 41.50(b)