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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* IGOR GEVKA, HONGDA MA, SATWIK SHUKLA,  
YUFEI CHEN, DANIEL TAM, EMANUEL ALEXANDRE STRAUSS,  
DANIEL OLMEDILLA DE LA CALLE, and SARANG MOHAN JOSHI

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Appeal 2020-002238  
Application 14/849,557<sup>1</sup>  
Technology Center 3600

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Before JOSEPH A. FISCHETTI, CYNTHIA L. MURPHY, and  
AMEE A. SHAH, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We reverse and enter a new ground of rejection.

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

## THE INVENTION

Appellant states its disclosure relates “to reviewing sponsored content for compliance with polices enforced by an online system.” Spec. ¶ 1.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method comprising:
  - receiving, at an online system, information describing one or more advertisements from one or more advertisers;
  - determining a likelihood of each of the one or more advertisements violating one or more policies of the online system;
  - for each of the one or more advertisements, determining an expected revenue for presenting the advertisement based on one or more of a group consisting of: an amount charged to an advertiser for presenting the advertisement, a budget for presenting the advertisement, targeting criteria defining a target group of users of the online system for receiving the advertisement, historical revenue information associated with the advertiser, and any combination thereof;
  - computing a score for each of the one or more advertisements, the score for the advertisement based at least in part on the likelihood of the advertisement violating one or more policies of the online system and the expected revenue for presenting the advertisement, wherein the score for the advertisement increases as the likelihood of the advertisement violating the one or more policies increases;
  - ordering the one or more advertisements to be reviewed into a queue based at least in part on the computed scores, wherein advertisements having higher scores have higher orders in the queue;
  - determining a predicted time until the advertisement is to be reviewed to determine whether the advertisement violates one or more policies of the online system based at least in part on an order of the advertisement in the queue; and
  - responsive to determining the predicted time exceeds a

threshold amount of time and before the advertisement is reviewed, including the advertisement in a selection process for presenting content for presentation to a user.

### THE REJECTION

The following rejection is before us for review<sup>2</sup>:

Claims 1–20 under 35 U.S.C. § 112(a) or 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement.

### ANALYSIS

#### 35 U.S.C. § 112(a) REJECTION

We will not sustain the rejection of claims 1–20 under 35 U.S.C. § 112(a). The Examiner rejects the claims as follows:

- a) Claim 1 recites **“computing a score for each of the one or more advertisements, the score for the advertisement based at least in part on the likelihood of the advertisement violating one or more policies of the online system and the expected revenue for presenting the advertisement.”** However, the original disclosure does not describe an algorithm/function/flowchart or equivalent necessary to compute the score. It follows that the original disclosure also does not have support for all computations of a score for the advertisement based at least in part on the likelihood of the advertisement violating one or more policies of the online system and the expected revenue for presenting the advertisement.

Final Act. 2–3.

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<sup>2</sup> The Examiner withdrew the rejections under 35 U.S.C. § 103(a) (Final Act. 3).

- b) Claim 8 recites “**applying a model to information describing interactions with the advertisement, the expected revenue for presenting the advertisement, and the cost to review metric for the advertisement to generate the score for the advertisement.**” However, the original disclosure does not describe an algorithm/function/flowchart or equivalent to a model applied to the information describing interactions with the advertisement, the expected revenue for presenting the advertisement, and the cost to review metric for the advertisement to generate the score for the advertisement; it follows that the original disclosure also does not have support for all models that can be applied to the information describing interactions with the advertisement, the expected revenue for presenting the advertisement, and the cost to review metric for the advertisement to generate the score for the advertisement. Claim 19 is similar in this regard; therefore, it is rejected for the same reasons given above.

*Id.* at 3.

Concerning item (a), Appellant cites to various paragraphs of the Specification which we agree support the involved claim language. Specifically, Appellant’s direction to the Specification at paragraph 14 is particularly relevant because it describes:

To more efficiently review advertisements for compliance with policies enforced by the online system, the online system calculates a score for each advertisement based at least in part on an expected revenue to the online system for presenting an advertisement to users. Additional factors are also used by the online system to calculate a score for an advertisement. Examples of additional factors include: an advertiser experience metric that describes an amount of time for the online system to review an advertisement, a quality metric that indicates an expected level of interest of users of the online system in the advertisement, and a cost to review metric that indicates an estimated amount of resources (time and human and computer reviewers) used to review the advertisement.

Thus, it is clear from the Specification that a computer score is derived “for compliance with polices enforced by the online system.” The Appellant need not describe “all computations of a score.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed Cir. 2016). We find that the description of the score computation in paragraphs 16–18 of the Specification shows possession of the claimed “score” at least with respect to the embodiment addressed. “[T]hat a claim may be broader than the specific embodiment disclosed in a specification is in itself of no moment.” *In re Rasmussen*, 650 F.2d 1212, 1215 (CCPA 1981). Therefore, we will not sustain the written description rejection based on the claimed “score.”

Concerning item (b), Appellant also cites to various paragraphs of the Specification which we again agree supports the involved claim language. Specifically, Appellant’s direction to the Specification at paragraph 45 is particularly relevant because it describes:

A model applied by the ranking module 235 may associate different weights with different components to generate the score for an advertisement or for a component. Based on scores generated for various advertisements, the ranking module orders advertisements or components in a queue to review for compliance with policies enforced by the online system 140. The advertisements or components are subsequently reviewed for compliance with policies enforced by the online system 140 based on their order in the queue, with advertisements or components having higher orders in the queue being reviewed sooner.

Thus, it is clear the Specification shows possession of the claimed “ranking model.” We disagree with the Examiner that the original disclosure needs to “have support for all models that can be applied.” *See Phillips*, 415 F.3d at 1323, *see also In re Rasmussen*, 650 F.2d at 1215. Instead, we find that the

description of “a model applied by the ranking module 235 may associate different weights with different components to generate the score for an advertisement or for a component” in paragraph 45 of the Specification shows possession of the claimed “ranking model” at least with respect to the embodiment addressed. *See Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008) (*quoting In re Freeman*, 573 F.2d 1237, 1245–46 (CCPA 1978)) (“This court permits a patentee to express that algorithm in any understandable terms including as a mathematical formula, in prose . . . or as a flow chart, or in any other manner that provides sufficient structure”).

Notwithstanding, we find that the language the Examiner determined problematic in parts (a) and (b) above was included in the Specification as originally filed. *See* Specification filed 9/9/2015. Original claims are part of the original specification. *See In re Gardner*, 480 F.2d 879, 879 (CCPA 1973).

Accordingly, we find that Appellant showed possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997).

### 35 U.S.C. § 101 REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b) we enter a new grounds of rejection of claims 1–20 under 35 U.S.C. § 101.

Concerning independent claim 1, we find the following:

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: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the 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 id.* 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 (1854)); 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.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

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) (“Guidance”).<sup>3</sup> “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.<sup>4</sup>

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) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).<sup>5</sup>

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<sup>3</sup> In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. 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](https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf)).

<sup>4</sup> The 2019 Revised Guidance supersedes MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.04 and also supersedes all versions of the USPTO’s “Eligibility Quick Reference Sheet Identifying Abstract Ideas.” *See* Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”). Accordingly, Appellant’s arguments challenging the sufficiency of the Examiner’s rejection will not be addressed to the extent those arguments are based on now superseded USPTO guidance.

<sup>5</sup> This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a

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.

Guidance, 84 Fed. Reg. at 52–56. The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, 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 Enfish*, 822 F.3d at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: 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

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practical application. *See* Guidance - Section III(A)(2), 84 Fed. Reg. at 54–55.

drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53; *see also* MPEP §§ 2106.04–2106.05.

The Specification states:

To prevent presentation of sponsored content from impairing user interactions, many online systems require sponsored content to comply with policies enforced by the online system for the sponsored content to be presented by the online system. Conventional, online systems review sponsored content items for compliance with policies enforced by an online system in the order the sponsored content items were received from entities. Some online systems prioritize review of sponsored content items from entities that have agreements with the online systems guaranteeing review of sponsored content items from the entities within a certain amount of time. However, this prioritization scheme does not account for various factors such as: potential revenue lost while a sponsored content is awaiting review, time-sensitivity issues requiring the expedited review of a sponsored content item, quality of a sponsored content item, or cost to review a sponsored content item.

Spec. ¶ 3.

Claim 1 recites in pertinent part,

information describing one or more advertisements from one or more advertisers;

determining a likelihood of each of the one or more advertisements violating one or more policies . . . ;

for each of the one or more advertisements, determining an expected revenue for presenting the advertisement based on one or more of a group consisting of: an amount charged to an advertiser for presenting the advertisement, a budget for presenting the advertisement, targeting criteria defining a target group of users . . . for receiving the advertisement, historical revenue information associated with the advertiser, and any combination thereof;

computing a score for each of the one or more advertisements, the score for the advertisement based at least in

part on the likelihood of the advertisement violating one or more policies of the online system and the expected revenue for presenting the advertisement, wherein the score for the advertisement increases as the likelihood of the advertisement violating the one or more policies increases;

ordering the one or more advertisements to be reviewed into a queue based at least in part on the computed scores, wherein advertisements having higher scores have higher orders in the queue;

determining a predicted time until the advertisement is to be reviewed to determine whether the advertisement violates one or more policies of the . . . system based at least in part on an order of the advertisement in the queue; and

responsive to determining the predicted time exceeds a threshold amount of time and before the advertisement is reviewed, including the advertisement in a selection process for presenting content for presentation to a user.

Accordingly, we find that claim 1 recites a scheme for prioritizing which advertisements are included in a selection process for presenting content for presentation to a user based at least in part on: the likelihood of the advertisement violating one or more policies, the expected revenue for presenting the advertisement and a predicted time until the advertisement is reviewed. Claim 1, thus, at least describes *inter alia*, advertising, managing personal behavior or relationships or interactions between people, business relations, which are ones of certain methods of organizing human activity that are judicial exceptions. Guidance, 84 Fed. Reg. at 52. Claim limitations such as,

computing a score for each of the one or more advertisements, the score for the advertisement based at least in part on the likelihood of the advertisement violating one or more policies of the online system and the expected revenue for presenting the advertisement, wherein the score for the advertisement

increases as the likelihood of the advertisement violating the one or more policies increases,

and “wherein advertisements having higher scores have higher orders in the queue,” are factors which deter behavior against policy violations by placing the violating advertisements higher in queue than those which do not.

Also, steps such as “computing a score,” “ordering the one or more advertisements to be reviewed into a queue,” “determining a predicted time,” and “determining the predicted time exceeds a threshold amount of time,” are all concepts performed in the human mind as mental processes. These steps are a kin to the steps of receiving, transmitting, storing, and analyzing data that mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarningIP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016); *see also* Guidance, 84 Fed. Reg. at 52.

Turning to the second prong of the “directed to” test, claim 1 only generically requires “an online system.” This component is described in the Specification at a high level of generality. *See* Spec. ¶¶ 12, 13 Fig. 1. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53. We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any assertedly inventive programming, require

any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

Thus, we find that claim 1 recites the judicial exceptions of certain methods of organizing human activity and a mental process that are not integrated into a practical application.

That the claim does not preempt all forms of the abstraction or may be limited to policy-based advertising, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Turning to the second step of the *Alice* analysis, because we find that claim 1 is directed to abstract ideas/judicial exceptions, the claim must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73). Simply programming a general-purpose computer or generic circuitry to perform an abstract idea does not provide an “inventive concept” such that the claim amounts to significantly more than that abstract idea. *See id.* at 221–227 (applying an abstract idea, such as an algorithm, on a general purpose

computer is not enough to transform a patent-ineligible abstract idea into a patent-eligible invention); *EON Corp. IP Holdings LLC v. AT&T Mobility LLC*, 785 F.3d 616, 623 (Fed. Cir. 2015) (“A general purpose computer is flexible—it can do anything it is programmed to do.”).

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to receive, determine, compute, order, and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *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.”). In short, each step does no more than require a generic computer to perform generic computer functions. The claim does not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g.*, Spec. ¶¶ 12, 13, Fig. 1). Thus, claim 1 at issue amounts to nothing significantly more than instructions to apply the abstract idea using some unspecified, generic computer. Under our precedents, that is not enough to transform an



abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–226.

Considered as an ordered combination, the computer components of Appellant’s claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (receive, determine, determine, compute, order, determine, and execute) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract); *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Independent claim 12 is directed to the same subject matter of claim 1, and thus our analysis above applies equally to independent claim 12. As the Federal Circuit has made clear “the basic character of a process claim drawn to an abstract idea is not changed by claiming only its performance by computers, or by claiming the process embodied in program instructions on a computer readable medium.” *See CyberSource*, 654 F.3d at 1375-76 (*citing In re Abele*, 684 F.2d 902 (CCPA 1982)).

Claims 2–11 and 13–20 depend from independent claims 1, and 12, respectively, and are directed to the same abstract idea as claim 1. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*,

776 F.3d 1343, 1348 (Fed. Cir. 2014) (explaining that when all claims are directed to the same abstract idea, “addressing each claim of the asserted patents [is] unnecessary”). These dependent claims recite additional features of mental steps, e.g., “modifying the order of the advertisements in the queue based at least in part on the modified score for the advertisement.” (Claims 4, 15). The additional claim elements recited in these claims are insufficient, in our view, to confer patent eligibility.

### CONCLUSIONS OF LAW

We conclude the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 112(a).

We enter a new ground of rejection of claims 1–20 under 35 U.S.C. § 101.

### DECISION

The Examiner’s rejection of claims 1–20 under 35 U.S.C. § 112(a) is reversed.

A new ground of rejection is entered for claims 1–20 under 35 U.S.C. § 101.

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 appellants, 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 . . . .

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

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).

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/ Basis</b>	<b>Affirmed</b>	<b>Reversed</b>	<b>New Ground</b>
1-20	112	Written description		1-20	
1-20	101	Eligibility			1-20
<b>Overall Outcome</b>				1-20	1-20

REVERSED; 37 C.F.R. §41.50(b)