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New USPTO Guidance on Patent Subject Matter Eligibility

Welcoming remarks will begin at
11:55 a.m. Eastern Time.

The formal presentation will begin at Noon Eastern

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New USPTO Guidance on Patent Subject Matter Eligibility

Moderator:

Lee Heiman, Azos AI LLC

Speaker:

Charles R. Macedo, Amster, Rothstein & Ebenstein LLP

June 24, 2015



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**We will be taking questions at the
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Other issues: +1-847-559-0846



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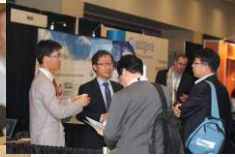
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Lee Heiman,
Azos AI LLC



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DISCLAIMER

The following presentation reflects the personal views and thoughts of Lee Heiman and Charles R. Macedo and is not to be construed as representing in any way the corporate views or advice of Azos AI LLC or Amster, Rothstein & Ebenstein LLP, nor the views or advice of the Association of University Technology Managers (AUTM). The content is solely for purposes of discussion and illustration, and is not to be considered legal advice.



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Agenda

- Statute and Judicially Created Exceptions to Patent-Eligibility
- Two-part test under *Mayo/Alice*
- USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility
 - Step 1: Examples of Claims That Are Not Directed to One of the Statutory Categories
 - Step 2A: Examples of Claims Directed to “Abstract Ideas”
 - Step 2B: Examples of “Enough” “Something More”



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The Statute and Categories of Patent Eligible Subject Matter

“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 ...”

(35 U.S.C. § 101).

- Process
- Machine
- Manufacture
- Composition of matter

Per 35 U.S.C. § 101.



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Judicial Exceptions

“ . . . Congress plainly contemplated that the patent laws would be given wide scope. . . . The Committee Reports accompanying the 1952 Act inform us that ***Congress intended statutory subject matter to ‘include anything under the sun that is made by man.’***”

This is not to suggest that § 101 has no limits or that it embraces every discovery. ***The [1] laws of nature, [2] physical phenomena, and [3] abstract ideas have been held not patentable.*** Thus, a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter. Likewise, Einstein could not patent his celebrated law that $E=mc^2$; nor could Newton have patented the law of gravity. ***Such discoveries are ‘manifestations of ... nature, free to all men and reserved exclusively to none.’***”

(*Diamond v. Chakrabarty*, 447 U.S. 303, 308-09 (1980) (emphasis added; citations omitted)).



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Two-part Test for Patent Eligibility Pre-*Mayo*

- | | |
|--|--|
| <p>1. Does the claim fall within the four statutory categories?</p> <ul style="list-style-type: none"> (i) Process (ii) Machine (iii) Manufacture, or (iv) Composition of matter | <p>2. Does the claim preempt one of the three “fundamental principles”?</p> <ul style="list-style-type: none"> (i) Laws of nature (ii) Physical phenomena, or (iii) Abstract ideas |
|--|--|

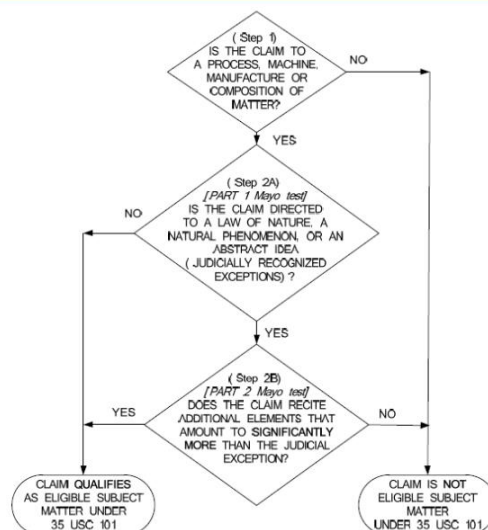
See *Bilski v. Kappos*, 130 S. Ct. 3218, 3225 (2010); *Diamond v. Diehr*, 450 U.S. 175, 185 (1981) (citing *Parker v. Flook*, 437 U.S. 584, 589 (1978)); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Research Corp. Techs., Inc. v. Microsoft Corp.*, 627 F.3d 859, 868 (Fed. Cir. 2010).

Two-step Test for Patent-Eligibility under *Mayo/Alice*

1. Is the claim directed to a patent ineligible concept?
 - (i) Laws of nature
 - (ii) Physical phenomena, or
 - (iii) Abstract ideas
2. If so, do additional elements in the claim transform the nature of the claim into a patent-eligible application?
 - Is there “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’”?

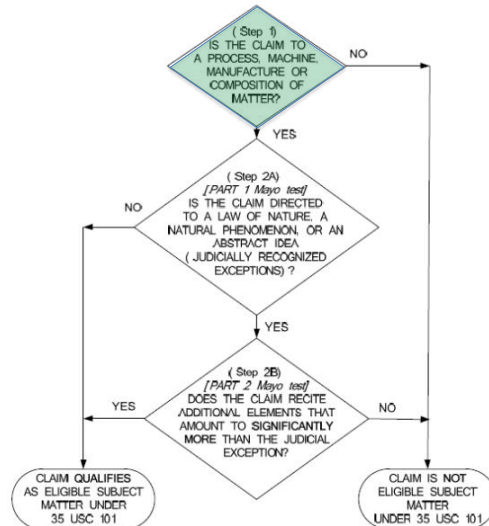
See *Mayo Collaborative Servs. v. Prometheus Labs.*, 132 S. Ct. 1289, 1293-94 (2012);
Alice Corp. Pty. Ltd. v. CLS Bank Int'l., 134 S. Ct. 2347, 2355 (2014).

Subject Matter Eligibility Test for Products and Processes (Per USPTO)



Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Subject Matter Eligibility Test for Products and Processes (Per USPTO)



Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

*PRIOR TO EVALUATING A CLAIM FOR PATENTABILITY, ESTABLISH THE
BROADEST REASONABLE INTERPRETATION OF THE CLAIM.
ANALYZE THE CLAIM AS A WHOLE WHEN EVALUATING FOR PATENTABILITY.*

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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*PRIOR TO EVALUATING A CLAIM FOR PATENTABILITY, ESTABLISH THE
BROADEST REASONABLE INTERPRETATION OF THE CLAIM.
ANALYZE THE CLAIM AS A WHOLE WHEN EVALUATING FOR PATENTABILITY.*

In other words, make sure you define the claim properly before you start your analysis.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

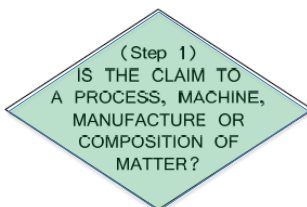


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*PRIOR TO EVALUATING A CLAIM FOR PATENTABILITY, ESTABLISH THE
BROADEST REASONABLE INTERPRETATION OF THE CLAIM.
ANALYZE THE CLAIM AS A WHOLE WHEN EVALUATING FOR PATENTABILITY.*

Step 1: Directed to One of the Statutory Categories?



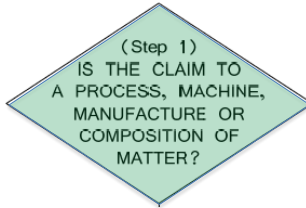
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Step 1: Directed to One of the Statutory Categories?



Step 1 * * * determines whether the claim is directed to a process, machine, manufacture, or composition of matter. * * *

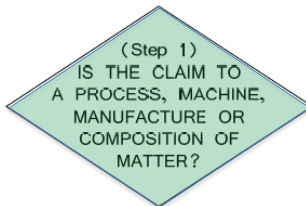
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Step 1: Directed to One of the Statutory Categories?



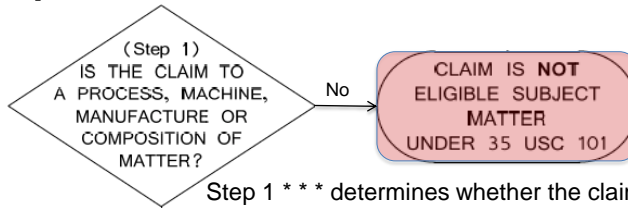
Step 1 * * * determines whether the claim is directed to a process, machine, manufacture, or composition of matter. * * *

Case Law Examples of Non-Statutory Subject Matter

- “Paradigm”
In re Ferguson, 558 F.3d 1359 (Fed. Cir. 2009)
- “Signal”
In re Nuijten, 500 F.3d 1346 (Fed. Cir. 2007)
- “[D]evice profile . . . comprised of two sets of data”
Digitech Image Techs., LLC v. Electronics for Imaging, Inc., 758 F.3d 1344 (Fed. Cir. 2014)
- “Software” Divorced From A Computer Readable Medium
Allvoice Devs. US LLC v. Microsoft Corp., No. 2014-1258, 2015 U.S. App. LEXIS 8476 (Fed. Cir. May 22, 2015) (unpublished)

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 1: Directed to One of the Statutory Categories?



Step 1 * * * determines whether the claim is directed to a process, machine, manufacture, or composition of matter. * * *

If the claim is **not** directed to one of these statutory categories, **reject the claim** under 35 U.S.C. § 101 as being drawn to non-statutory subject matter, ***

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 1: Directed to One of the Statutory Categories?

1. A computer-implemented method for protecting a computer from an electronic communication containing malicious code, comprising executing on a processor the steps of:

- receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;
- storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;
- extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises
 - scanning the communication for an identified beginning malicious code marker,
 - flagging each scanned byte between the beginning marker and a successive end malicious code marker,
 - continuing scanning until no further beginning malicious code marker is found,
 - and
- creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;
- transferring the sanitized electronic communication to the non-quarantine sector of the memory; and
- deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

* * * The method claim recites a series of acts for protecting a computer from an electronic communication containing malicious code. Thus, the claim is directed to a process, which is one of the statutory categories of invention (*Step 1: YES*).

* * *

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 1: Directed to One of the Statutory Categories?

1. A computer-implemented method for protecting a computer from an electronic communication containing malicious code, comprising executing on a processor the steps of:

receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;

storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;

extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises

- scanning the communication for an identified beginning malicious code marker,
- flagging each scanned byte between the beginning marker and a successive end malicious code marker,
- continuing scanning until no further beginning malicious code marker is found,
- and

creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;

transferring the sanitized electronic communication to the non-quarantine sector of the memory; and

deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

* * * The method claim recites **a series of acts** for protecting a computer from an electronic communication containing malicious code. Thus, the claim is directed to a process, which is one of the statutory categories of invention (*Step 1: YES*).

* * *

“Method” = “a series of acts”

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 1: Directed to One of the Statutory Categories?

2. A non-transitory computer-readable medium for protecting a computer from an electronic communication containing malicious code, comprising instructions stored thereon, that when executed on a processor, perform the steps of:

receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;

storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;

extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises

- scanning the communication for an identified beginning malicious code marker,
- flagging each scanned byte between the beginning marker and a successive end malicious code marker,
- continuing scanning until no further beginning malicious code marker is found,
- and

creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;

transferring the sanitized electronic communication to the non-quarantine sector of the memory; and

deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

* * * The claim is directed to a non-transitory computer-readable medium, which is a manufacture, and thus a statutory category of invention (*Step 1: YES*).

* * *

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 1: Directed to One of the Statutory Categories?

2. A non-transitory computer-readable medium for protecting a computer from an electronic communication containing malicious code, comprising instructions stored thereon, that when executed on a processor, perform the steps of:

receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;

storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;

extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises

- scanning the communication for an identified beginning malicious code marker,
- flagging each scanned byte between the beginning marker and a successive end malicious code marker,
- continuing scanning until no further beginning malicious code marker is found,

and

creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;
transferring the sanitized electronic communication to the non-quarantine sector of the memory; and
deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

* * * The claim is directed to a non-transitory computer-readable medium, which is a manufacture, and thus a statutory category of invention (*Step 1: YES*).

* * *

“Manufacture” includes software stored on non-transitory computer-readable medium

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 1: Directed to One of the Statutory Categories?

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

- (i) wherein each of the first web pages belongs to one of a plurality of web page owners;
- (ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and
- (iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

- (i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;
- (ii) automatically identify as the source page the one of the first web pages on which the link has been activated;
- (iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and
- (iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

The claim recites a system comprising a computer server and computer store. The system comprises a device or set of devices and, therefore, is directed to a machine which is a statutory category of invention (*Step 1: YES*).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 1: Directed to One of the Statutory Categories?

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

The claim recites a system comprising a computer server and computer store. The system comprises a device or set of devices and, therefore, is directed to a machine which is a statutory category of invention (*Step 1: YES*).

"Machine" = a device or a set of devices

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 1: Directed to One of the Statutory Categories?

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

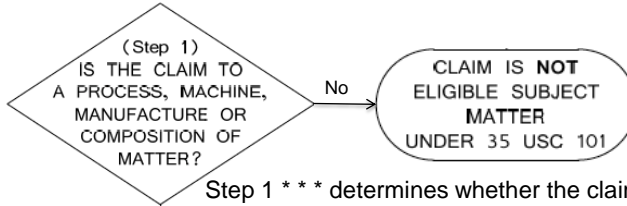
The claim recites a system comprising a computer server and computer store. The system comprises a device or set of devices and, therefore, is directed to a machine which is a statutory category of invention (*Step 1: YES*).

This claim was found eligible by the Federal Circuit in *DDR Holdings, LLC v. Hotels.com et al.*, 113 USPQ2d 1097 (Fed. Cir. 2014) (DDR). The patent at issue was U.S. Patent No. 7,818,399.

"Machine" = a device or a set of devices

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 1: Directed to One of the Statutory Categories?



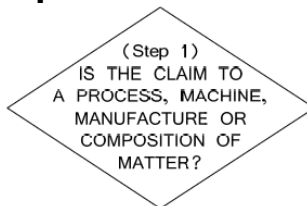
Step 1 * * * determines whether the claim is directed to a process, machine, manufacture, or composition of matter. * * *

If the claim is **not** directed to one of these statutory categories, **reject the claim** under 35 U.S.C. § 101 as being drawn to non-statutory subject matter, * * * **and continue examination for patentability.**

IN ACCORDANCE WITH COMPACT PROSECUTION, ALONG WITH DETERMINING ELIGIBILITY, ALL CLAIMS ARE TO BE FULLY EXAMINED UNDER EACH OF THE OTHER PATENTABILITY REQUIREMENTS: 35 USC §§ 102, 103, 112, and 101 (UTILITY, INVENTORSHIP, DOUBLE PATENTING) AND NON-STATUTORY DOUBLE PATENTING.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 1: Directed to One of the Statutory Categories?



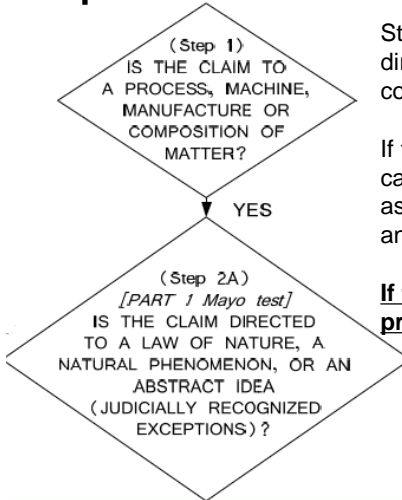
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If the claim is not directed to one of these statutory categories, reject the claim under 35 U.S.C. § 101 as being drawn to non-statutory subject matter, * * * and continue examination for patentability.

If the claim is directed to a statutory category, **proceed to Step 2.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 1: Directed to One of the Statutory Categories?



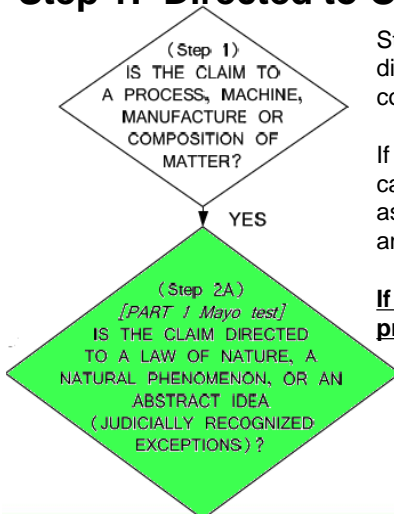
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If the claim is not directed to one of these statutory categories, reject the claim under 35 U.S.C. § 101 as being drawn to non- statutory subject matter, *** and continue examination for patentability.

If the claim is directed to a statutory category, proceed to Step 2.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 1: Directed to One of the Statutory Categories?



Step 1 * * * determines whether the claim is directed to a process, machine, manufacture, or composition of matter. * * *

If the claim is not directed to one of these statutory categories, reject the claim under 35 U.S.C. § 101 as being drawn to non- statutory subject matter, *** and continue examination for patentability.

If the claim is directed to a statutory category, proceed to Step 2.

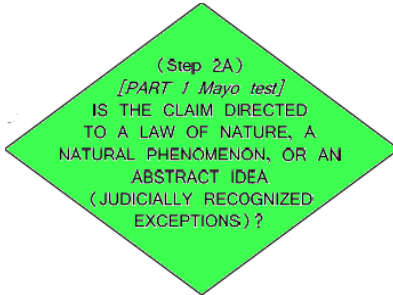
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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



Step 2 is the two-part analysis from Alice Corp. (also called the *Mayo* test) for claims directed to laws of nature, natural phenomena, and abstract ideas (the judicially recognized exceptions).

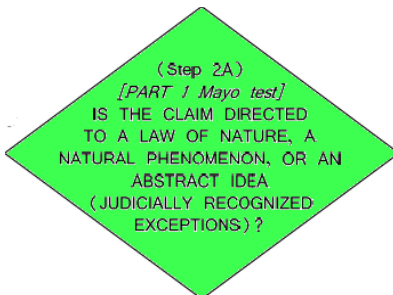
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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



In **Step 2A**, determine whether the claim is directed to a law of nature, a natural phenomenon, or an abstract idea (judicial exceptions).

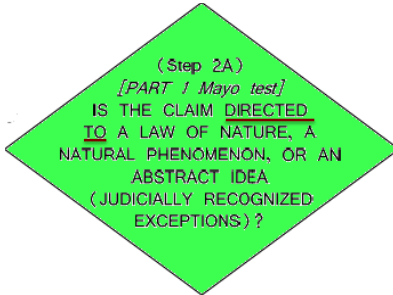
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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



“Directed to” means the exception **is recited in the claim**, *i.e.*, the claim sets forth or describes the exception.

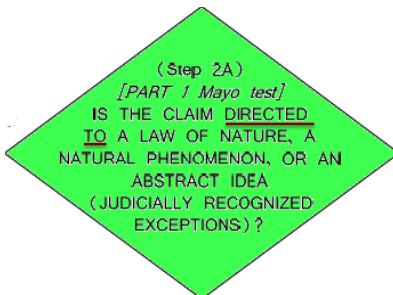
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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



“Directed to” means the exception **is recited in the claim**, *i.e.*, the claim sets forth or describes the exception.

This is a change from original guidelines reflecting comments received that prior standard was too broad.
But still a controversial statement.

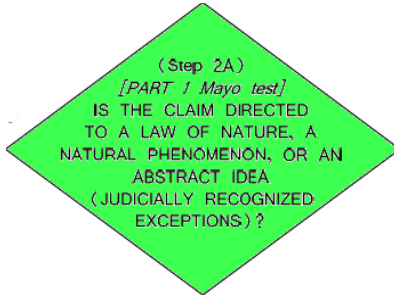
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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



If the claim when **viewed as a whole** clearly does not seek to “tie up” any judicial exception, use the “streamlined analysis” ***.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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“Streamlined Eligibility Analysis”

- The most recent USPTO Guidelines also offer a “Streamlined Eligibility Analysis” for:
 - “**a claim that may or may not recite a judicial exception, but when viewed as a whole, clearly does not seek to tie up any judicial exception such that others cannot practice it.**”
- Such a claim is considered patent-eligible and need not proceed through the full analysis in the subject matter eligibility flowchart

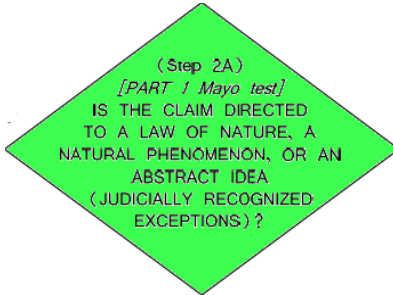
Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



If the claim when **viewed as a whole** clearly does not seek to “tie up” any judicial exception, use the “streamlined analysis” ***.

Requiring claim to be “viewed as a whole”, not merely parsed, was an important aspect of the *Alice* decision.

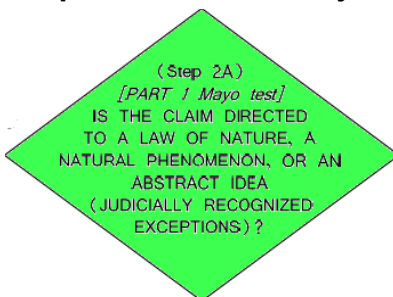
Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



If the claim when viewed as a whole clearly does not seek **to “tie up”** any judicial exception, use the “streamlined analysis” ***.

The whole point of an *Alice* analysis is to determine whether there is a risk of impermissible preemption.

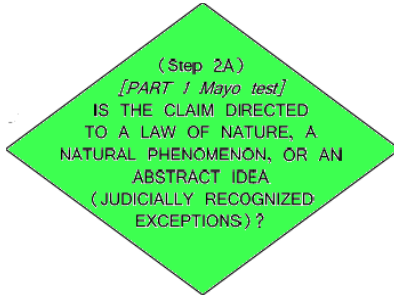
Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



If the claim when viewed as a whole clearly does not seek to “tie up” any judicial exception, **use the “streamlined analysis” *****.

Streamlined analysis is more likely to be used in non-business method classes.

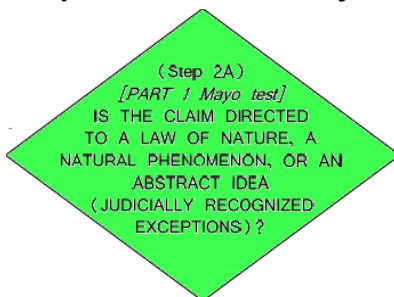
Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



Examples of the types of concepts that the courts have found to be laws of nature, natural phenomena, or abstract ideas are provided in Parts I.A.2 and IV of the *Interim Eligibility Guidance*.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

1. A computer-implemented method for protecting a computer from an electronic communication containing malicious code, comprising executing on a processor the steps of:

receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;

storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;

extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises

- scanning the communication for an identified beginning malicious code marker,
- flagging each scanned byte between the beginning marker and a successive end malicious code marker,
- continuing scanning until no further beginning malicious code marker is found,
- and

creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;

transferring the sanitized electronic communication to the non-quarantine sector of the memory; and

deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

***** The claimed invention relates to software technology for isolation and extraction of malicious code contained in an electronic communication.** The claim is directed towards physically isolating a received communication on a memory sector and extracting malicious code from that communication to create a sanitized communication in **a new data file**. **Such action does not describe an abstract concept, or a concept similar to those found by the courts to be abstract**, such as a fundamental economic practice, a method of organizing human activity, an idea itself (standing alone), or a mathematical relationship. ***

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

1. A computer-implemented method for protecting a computer from an electronic communication containing malicious code, comprising executing on a processor the steps of:

receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;

storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;

extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises

- scanning the communication for an identified beginning malicious code marker,
- flagging each scanned byte between the beginning marker and a successive end malicious code marker,
- continuing scanning until no further beginning malicious code marker is found,
- and

creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;

transferring the sanitized electronic communication to the non-quarantine sector of the memory; and

deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

***** In contrast, the invention claimed here is directed towards performing isolation and eradication of computer viruses, worms, and other malicious code, a concept inextricably tied to computer technology and distinct from the types of concepts found by the courts to be abstract.** Accordingly, the claimed steps do not recite an abstract idea. Nor do they implicate any other judicial exception.

Accordingly, the claim is not directed to any judicial exception (Step 2A: NO). The claim is eligible.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

2. A non-transitory computer-readable medium for protecting a computer from an electronic communication containing malicious code, comprising instructions stored thereon, that when executed on a processor, perform the steps of:

receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;

storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;

extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises

- scanning the communication for an identified beginning malicious code marker,
- flagging each scanned byte between the beginning marker and a successive end malicious code marker,
- continuing scanning until no further beginning malicious code marker is found,

and

creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;

transferring the sanitized electronic communication to the non-quarantine sector of the memory; and

deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

* * * The claim recites **the same steps as claim 1** stored on a non-transitory computer readable medium such that they are executable on a processor. The invention described by those steps is not directed towards an abstract idea, **for the reasons explained above** (*Step 2A: NO*).

The claim is eligible.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

2. A non-transitory computer-readable medium for protecting a computer from an electronic communication containing malicious code, comprising instructions stored thereon, that when executed on a processor, perform the steps of:

receiving an electronic communication containing malicious code in a computer with a memory having a boot sector, a quarantine sector and a non-quarantine sector;

storing the communication in the quarantine sector of the memory of the computer, wherein the quarantine sector is isolated from the boot and the non-quarantine sector in the computer memory, where code in the quarantine sector is prevented from performing write actions on other memory sectors;

extracting, via file parsing, the malicious code from the electronic communication to create a sanitized electronic communication, wherein the extracting comprises

- scanning the communication for an identified beginning malicious code marker,
- flagging each scanned byte between the beginning marker and a successive end malicious code marker,
- continuing scanning until no further beginning malicious code marker is found,

and

creating a new data file by sequentially copying all non-flagged data bytes into a new file that forms a sanitized communication file;

transferring the sanitized electronic communication to the non-quarantine sector of the memory; and

deleting all data remaining in the quarantine sector.

PTO Abstract Idea Example 1

Analysis

* * * The claim recites **the same steps as claim 1** stored on a non-transitory computer readable medium such that they are executable on a processor. The invention described by those steps is not directed towards an abstract idea, **for the reasons explained above** (*Step 2A: NO*).

The claim is eligible.

The form of the claim does not change the analysis.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

*** This claim recites a system “useful in outsource provider serving web pages offering commercial opportunities,” but is directed to **automatically generating and transmitting a web page in response to activation of a link using data identified with a source web page having certain visually perceptible elements.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

*** The claim does not recite a mathematical algorithm; nor does it recite a **fundamental economic or longstanding commercial practice**. The claim addresses a business challenge (retaining website visitors) that is **particular to the Internet**.

PTO is drawing a distinction with *Bilski* and *Alice*.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

*** The claimed invention differs from other claims found by the courts to recite abstract ideas in that it does not “**merely** recite the performance of some **business practice known from the pre-Internet world along with the requirement to perform it on the Internet**. Instead, the claimed solution is **necessarily rooted in computer technology** in order to overcome a problem **specifically arising in the realm of computer networks**.”

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

*** No idea similar to those previously found by the courts to be abstract has been identified in the claim.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

*** During examination, **if the examiner does not identify an abstract idea recited in the claim**, the claim should be deemed to be not directed to a judicial exception (*Step 2A: NO*). **The claim is eligible.**

(*Step 1: YES*).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Not Directed to Abstract Idea

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

*** During examination, **if the examiner does not identify an abstract idea recited in the claim**, the claim should be deemed to be not directed to a judicial exception (*Step 2A: NO*). **The claim is eligible.**

(*Step 1: YES*).

Th[is] claim was found eligible by the Federal Circuit in *DDR Holdings, LLC v. Hotels.com et al.*, 113 USPQ2d 1097 (Fed. Cir. 2014) (DDR). The patent at issue was U.S. Patent No. 7,818,399.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Judicial Examples of Claims *NOT* Directed to An “Abstract Idea”

District Courts

- **methods of “remotely monitoring data associated with an Internet session and controlling network access”**

Helios Software, LLC v. SpectorSoft Corp., No. 12-cv-00081, 2014 U.S. Dist. LEXIS 135379 (D. Del. Sept. 18, 2014)

- **“computerized systems and methods for monitoring a physical casino poker game”**

Ameranth, Inc. v. Genesis Gaming Solutions, Inc., No. 11-cv-00189, 2014 U.S. Dist. LEXIS 175600 (C.D. Cal. Nov. 12, 2014) (failed to meet burden on summary judgment)

PTAB

- **methods of “processing paper checks”**

U.S. Bancorp v. SoluTran, Inc., CBM2014-00076, Paper No. 16 (PTAB Aug. 7, 2014)

- **systems and methods of authenticating a webpage**

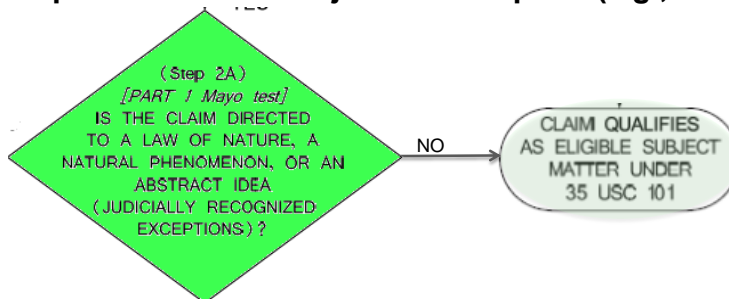
PNC Bank v. Secure Access, LLC, CBM2014-00100, Paper No. 10 (PTAB Sept. 9, 2014)



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Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

10. A method of generating a device profile that describes properties of a device in a digital image reproduction system for capturing, transforming or rendering an image, said method comprising:

generating first data for describing a device dependent transformation of color information content of the image to a device independent color space through use of measured chromatic stimuli and device response characteristic functions;

generating second data for describing a device dependent transformation of spatial information content of the image in said device independent color space through use of spatial stimuli and device response characteristic functions; and combining said first and second data into the device profile.

PTO Abstract Idea Example 5

Analysis

*** The claim recites a method of generating first data and second data using mathematical techniques and combining the first and second data into a device profile. In other words, the claimed method simply describes **the concept of gathering and combining data** by reciting steps of organizing information **through mathematical relationships**. The gathering and combining merely employs mathematical relationships to manipulate existing information to generate additional information in the form of a 'device profile,' without limit to any use of the device profile.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

10. A method of generating a device profile that describes properties of a device in a digital image reproduction system for capturing, transforming or rendering an image, said method comprising:

generating first data for describing a device dependent transformation of color information content of the image to a device independent color space through use of measured chromatic stimuli and device response characteristic functions;

generating second data for describing a device dependent transformation of spatial information content of the image in said device independent color space through use of spatial stimuli and device response characteristic functions; and combining said first and second data into the device profile.

PTO Abstract Idea Example 5

Analysis

*** This idea is similar to the basic concept of **manipulating information using mathematical relationships** (e.g., converting numerical representation in Benson), which has been found by the courts to be an abstract idea. **Therefore, the claim is directed to an abstract idea** (Step 2A: YES).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

10. A method of generating a device profile that describes properties of a device in a digital image reproduction system for capturing, transforming or rendering an image, said method comprising:

generating first data for describing a device dependent transformation of color information content of the image to a device independent color space through use of measured chromatic stimuli and device response characteristic functions;

generating second data for describing a device dependent transformation of spatial information content of the image in said device independent color space through use of spatial stimuli and device response characteristic functions; and combining said first and second data into the device profile.

PTO Abstract Idea Example 5

Analysis

*** This idea is similar to the basic concept of **manipulating information using mathematical relationships** (e.g., converting numerical representation in Benson), which has been found by the courts to be an abstract idea. **Therefore, the claim is directed to an abstract idea** (Step 2A: YES).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

10. A method of generating a device profile that describes properties of a device in a digital image reproduction system for capturing, transforming or rendering an image, said method comprising:

generating first data for describing a device dependent transformation of color information content of the image to a device independent color space through use of measured chromatic stimuli and device response characteristic functions;

generating second data for describing a device dependent transformation of spatial information content of the image in said device independent color space through use of spatial stimuli and device response characteristic functions; and combining said first and second data into the device profile.

PTO Abstract Idea Example 5

Analysis

*** This idea is similar to the basic concept of **manipulating information using mathematical relationships** (e.g., converting numerical representation in Benson), which has been found by the courts to be an abstract idea. **Therefore, the claim is directed to an abstract idea** (Step 2A: YES).

Th[is] claim was found ineligible by the Federal Circuit in *Digitech Image Tech., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 6,128,415. The claim is directed to an abstract idea ***.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

Claim 1. A system for managing a game of Bingo which comprises:

- (a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;
- (b) an input and output terminal connected to the CPU and memory of the computer; and (c) a program in the computer enabling:
 - (i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;
 - (ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;
 - (iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;
 - (iv) retrieval of the group using the player identifier;
 - (v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;
 - (vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;
 - (vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and
 - (viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

PTO Abstract Idea Example 6

Analysis

*** The claim recites program elements (i) through (viii) that describe the steps of managing a game of Bingo, including for example inputting and storing two sets of Bingo numbers, assigning a unique player identifier and control number, and verifying a winning set of Bingo numbers.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

Claim 1. A system for managing a game of Bingo which comprises:

- (a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;
- (b) an input and output terminal connected to the CPU and memory of the computer; and (c) a program in the computer enabling:
 - (i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;
 - (ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;
 - (iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;
 - (iv) retrieval of the group using the player identifier;
 - (v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;
 - (vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;
 - (vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and
 - (viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

PTO Abstract Idea Example 6

Analysis

*** **Managing the game of Bingo as recited in the claim can be performed mentally or in a computer and is similar to the kind of 'organizing human activity' at issue in Alice Corp.** Although the claims are not drawn to the same subject matter, **the abstract idea of managing a game of Bingo is similar to the abstract ideas of managing risk (hedging) during consumer transactions (Bilski) and mitigating settlement risk in financial transactions (Alice Corp.)**

Claim 1 describes managing the game of Bingo and therefore is directed to an abstract idea (Step 2A: YES).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

Claim 1. A system for managing a game of Bingo which comprises:

- (a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;
- (b) an input and output terminal connected to the CPU and memory of the computer; and (c) a program in the computer enabling:
 - (i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;
 - (ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;
 - (iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;
 - (iv) retrieval of the group using the player identifier;
 - (v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;
 - (vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;
 - (vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and
 - (viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

PTO Abstract Idea Example 6

Analysis

*** **Managing the game of Bingo as recited in the claim can be performed mentally or in a computer and is similar to the kind of 'organizing human activity' at issue in Alice Corp.** Although the claims are not drawn to the same subject matter, **the abstract idea of managing a game of Bingo is similar to the**

Th[is] claim was found ineligible by the Federal Circuit in *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 6,398,646. The claim is directed to an abstract idea ***

Bingo and therefore is directed to an abstract idea (Step 2A: YES).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

1. A method, comprising:

- receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;
- processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party, wherein the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction.

PTO Abstract Idea Example 7

Analysis

*** The claim recites the steps of creating a contract, including receiving a request for a performance guaranty (contract), processing the request by underwriting to provide a performance guaranty and offering the performance guaranty. **This describes the creation of a contractual relationship, which is a commercial arrangement involving contractual relations similar to the fundamental economic practices found by the courts to be abstract ideas (e.g., hedging in *Bilski*).**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

1. A method, comprising:

receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;

processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party, wherein the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction.

PTO Abstract Idea Example 7

Analysis

*** It is also noted that **narrowing the commercial transactions to particular types of relationships or particular parts of that commercial transaction** (e.g., underwriting) would not render the concept less abstract. **Thus, the claim is directed to an abstract idea** (Step 2A: YES).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

1. A method, comprising:

receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;

processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party, wherein the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction.

PTO Abstract Idea Example 7

Analysis

*** It is also noted that **narrowing the commercial transactions to particular types of relationships or particular parts of that commercial transaction** (e.g., underwriting) would not render the concept less abstract. **Thus, the claim is directed to an abstract idea** (Step 2A: YES).

Th[is] claim was found ineligible by the Federal Circuit in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 7,644,019. The claim is directed to an abstract idea ***.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** The claim recites an eleven step process for displaying an advertisement in exchange for access to copyrighted media. That is, the claim **describes the concept of using advertising as an exchange or currency**. This concept is similar to the concepts involving human activity relating to commercial practices (*e.g.*, hedging in *Bilski*) that have been found by the courts to be abstract ideas.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** The **addition of limitations that narrow the idea**, such as receiving copyrighted media, selecting an ad, offering the media in exchange for watching the selected ad, displaying the ad, allowing the consumer access to the media, and receiving payment from the sponsor of the ad, further describe the abstract idea, but **do not make it less abstract**. The claim is directed to an abstract idea (*Step 2A: YES*).

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Example from Guidelines of Claim Directed to Abstract Idea

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** The addition of limitations that narrow the idea, such as receiving copyrighted media, selecting an ad, offering the media in exchange for watching the selected ad, displaying the ad, allowing the consumer access to the media, and receiving payment from the sponsor of the ad, further describe

Th[is] claim was found ineligible by the Federal Circuit in *Ultramercial v. Hulu and WildTangent*, 2014 U.S. App. LEXIS 21633 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 7,346,545. The claim is directed to an abstract idea ***.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2A: Examples of Claims Directed to An "Abstract Idea"

Financial Concepts

- **"intermediated settlement"**
Alice Corp. Pty. Ltd. v. CLS Bank Int'l., 134 S. Ct. 2347 (2014)
- **"hedging risk"**
Bilski v. Kappos, 561 U.S. 593 (2010)
- **"routinely modifying transaction amounts and depositing the designated, incremental differences into a recipient account"**
Every Penny Counts v. Wells Fargo Bank, N.A., No. 8:11-cv-02826, 2014 U.S. Dist. LEXIS 127369 (M.D. Fla. Sept. 11, 2014)
- **banking transactions**
Joao Bock Transaction Sys., LLC v. Jack Henry & Assocs., No. 1:12-cv-01138, 2014 U.S. Dist. LEXIS 172567 (D. Del. Dec. 15, 2014)
- **"allowing users to assess their borrowing ability without revealing their identities to the lenders until they wish to do so"**
Mortgage Grader, Inc. v. Costco Wholesale Corp., No. 8:13-cv-00043, Order at 9 (C.D. Cal. Jan. 12, 2015)
- **"advancing funds based on future retirement payments"**
U.S. Bancorp v. Retirement Capital Asset Management Co., CBM2013-00014, Paper No. 33 (PTAB Aug. 22, 2014)
- **"having a third party intermediate a settlement"**
Fidelity National Information Services, Inc. v. CheckFree Corp., CBM2013-00030, Paper No. 51 (PTAB Dec. 22, 2014)
- **"performing a real-time Web transaction by displaying and providing at least one application a user selects to access checking and savings accounts, and transferring funds (i.e., debiting or crediting) in response to user signals from an input device"**
SAP America, Inc. v. Lakshmi Arunchalam, CBM2013-00013, Paper No. 61 (PTAB Sept. 18, 2014)
- **"transferring funds from one account to another using a third-party intermediary"**
Metavante Corp. v. CashEdge, Inc., CBM2013-00028, Paper No. 49 (PTAB Dec. 22, 2014)
- **"a mortgagee paying down a mortgage early when funds are available and borrowing funds as needed to reduce the overall interest charged by the mortgage"**
CMG Financial Servs., Inc. v. Pacific Trust Bank, F.S.B., No. 2:11-cv-10344-PSG-MRW, 2014 U.S. Dist. LEXIS 145557 (C.D. Cal. Aug. 29, 2014)



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Step 2A: Examples of Claims Directed to An “Abstract Idea”

Sales Concepts

•**“Guarantee of a sales transaction**

buySAFE, Inc. v. Google, Inc., 765 F.3d 1350 (Fed. Cir. 2014)

•**“showing an advertisement before delivering free content”**

Ultracomercial, Inc. v. Hulu, LLC, No. 2010-1544, 2014 U.S. App. LEXIS 21633 (Fed. Cir. Nov. 14, 2014)

•**“upselling”**

Tuxis Techs., LLC v. Amazon.com, Inc., No. 1:13-cv-01771, 2014 U.S. Dist. LEXIS 122457 (D. Del. Sept. 3, 2014)

•**“know[ing] your audience” in advertising**

OpenTV, Inc. v. Netflix Inc., No. 3:14-cv-01525, 2014 U.S. Dist. LEXIS 174432 (N.D. Cal. Dec. 16, 2014)

•**“using a computer to facilitate negotiations between an airline and its customer that results in a contract for a product upgrade”**

Tenon & Groove, LLC v. Plusgrade S.E.C., No. 1:12-cv-01118, 2015 U.S. Dist. LEXIS 754 (D. Del. Jan. 6, 2015)

•**“creating a product catalog”**

LinkedIn Corp. v. AVMarkets, Inc., CBM2013-00025, Paper No. 30 (PTAB Nov. 10, 2014)

•**“interacting with customers to promote marketing and sales”**

Open Text S.A. v. Alfresco Software LTD, No. 3:13-cv-04843 (N.D. Cal. Sept. 19, 2014)

•**“converting one vendor’s loyalty award credits into loyalty award credits of another vendor”**

Loyalty Conversion Sys. Corp. v. American Airlines, Inc., No. 2:13-cv-00655, 2014 U.S. Dist. LEXIS 122244 (E.D. Tex. Sept. 2, 2014) (Bryson, J., sitting by designation)



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Step 2A: Examples of Claims Directed to An “Abstract Idea”

Behavioral Concepts

•**“asking someone whether they want to perform a task, and if they do, waiting for them to complete it, and if they do not, asking someone else”**

Eclipse IP LLC v. McKinley Equip. Corp., No. 2:14-cv-00154, 2014 U.S. Dist. LEXIS 125395 (C.D. Cal. Sept. 4, 2014)

•**“instruction, evaluation, and review”**

IpLearn, LLC v. K12 Inc., No. 1:11-cv-01026, 2014 U.S. Dist. LEXIS 173850 (D. Del. Dec. 17, 2014)

•**“collaborative activity”**

Salesforce.com, Inc. v. VirtualAgility, Inc., CBM2013-00024, Paper No. 47 (PTAB Sept. 16, 2014)

•**“computer assisted matchmaking”**

Lumen View Tech. LLC v. Findthebest.com, Inc., 984 F. Supp. 2d 189 (S.D.N.Y. 2013), *appeal dismissed by Appellant Lumen View in view of Alice*, No. 2014-1156, ECF. No. 27, Motion at 1 (Fed. Cir. Sept. 16, 2013) 014)

•**“meal planning”**

Dietgoal Innovations LLC v. Bravo Media LLC, No. 1:13-cv-08391, 2014 U.S. Dist. LEXIS 92484 (S.D.N.Y. Jul. 8, 2014)

•**“determining if a decision is required”**

Comcast IP Holdings I, LLC v. Sprint Communications Company L.P., et al., No. 1:12-cv-00205-RGA, 2014 U.S. Dist. LEXIS 96289 (D. Del. July 16, 2014)

•**“playing bingo over the Internet”**

Planet Bingo, LLC v. VKGS LLC, 576 Fed. Appx. 1005 (Fed. Cir. 2014)



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Step 2A: Examples of Claims Directed to An “Abstract Idea”

Organizational Concepts

- **“organizing information through mathematical correlations”**

Digitech Image Techs., LLC v. Electronics for Imaging, Inc., 758 F.3d 1344 (Fed. Cir. 2014)

- **“controlled exchange of information about people”**

Walker Digital LLC v. Google Inc., No. 1:11-cv-00318-LPS, 2014 U.S. Dist. LEXIS 122448 (D. Del. Sept. 3, 2014)

- **“budgeting”**

- **“scanning groups of images and organizing them”**

- **“the creation of digital photo albums or storage”**

- **“using aliases to facilitate transactions”**

Intellectual Ventures I LLC v. Mfrs. & Traders Trust Co., No. 1:13-cv-01274, 2014 U.S. Dist. LEXIS 174725 (D. Del. Dec. 18, 2014)

- **“cataloguing documents to facilitate their retrieval from storage in the field of remote computing”**

Cloud Satchel LLC v. Amazon.com, Inc., Barnes & Noble, Inc., No. 1:13-cv-00941, -00942, 2014 U.S. Dist. LEXIS 174715, at *19 (Dec. 18, 2014)

- **“establishing relationships between documents and making those relationships accessible to other users”**

Bascom Research, LLC v. Facebook, Inc., No. 3:12-cv-06293, Order at 15 (N.D. Cal. Jan. 5, 2015)

- **“mapping geometrical information components to standard fittings using the . . . criteria’ recited in the claims at issue”**

East Coast Sheet Metal Fabricating Corp., d/b/a EastCoast CAD/CAM v. Autodesk, Inc., No. 12-cv-517-LM (D.N.H. Jan. 15, 2015)



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Step 2A: Examples of Claims Directed to An “Abstract Idea”

Algorithms

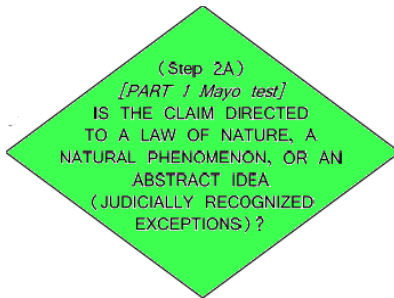
- **Mathematical formula for computing “alarm limits” in a catalytic conversion process**

Parker v. Flook, 437 U.S. 584 (1978)

- **“1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory”**

Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A., Nos. 2013-1588, 2013-1589, 2014-1112, 2014-1687, 2014 U.S. App. LEXIS 24258 (Fed. Cir. Dec. 23, 2014)

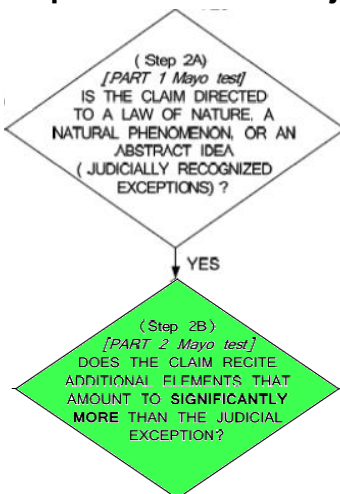
Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



If the claim recites a nature-based product limitation, the markedly different characteristics analysis is used to evaluate whether the claim is directed to a “product of nature” that falls under the law of nature and natural phenomenon exceptions. To determine whether the markedly different characteristics analysis is needed, and how to perform this analysis, see Part I.A.3 of the *Interim Eligibility Guidance*.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

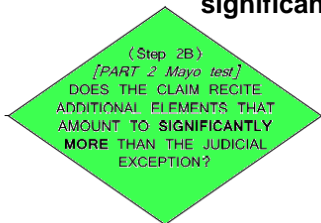
Step 2A: Directed to a judicial exception (e.g., “abstract idea”)?



Even when step 2A is met, the PTO will move on to Step 2B.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 2B: Does the claim recite additional elements that amount to significantly more than the judicial exception?



Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 2B: Example from Guidelines of Claim With Enough More

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

Under the 2014 Interim Eligibility Guidance no further analysis would be necessary. In this decision, however, the court went on to point out certain features of the claim that amount to an inventive concept for resolving this particular Internet-centric problem, rendering the claims patent eligible.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

- (i) wherein each of the first web pages belongs to one of a plurality of web page owners;
- (ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and
- (iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

- (i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;
- (ii) automatically identify as the source page the one of the first web pages on which the link has been activated;
- (iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and
- (iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

"In particular, the '399 patent's claims address the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after "clicking" on an advertisement and activating a hyperlink. For example, asserted claim 19 recites a system that, among other things, 1) stores "visually perceptible elements" corresponding to numerous host websites in a database, with each of the host websites displaying at least one link associated with a product or service of a third-party merchant, 2) on activation of this link by a website visitor, automatically identifies the host, and 3) instructs an Internet web server of an "out-source provider" to construct and serve to the visitor a new, hybrid web page that merges content associated with the products of the third-party merchant with the stored "visually perceptible elements" from the identified host website. []"

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

- (i) wherein each of the first web pages belongs to one of a plurality of web page owners;
- (ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and
- (iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

- (i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;
- (ii) automatically identify as the source page the one of the first web pages on which the link has been activated;
- (iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and
- (iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

"In more plain language, upon the click of an advertisement for a third-party product displayed on a host's website, the visitor is no longer transported to the third party's website. Instead, the patent claims call for an "outsource provider" having a web server which directs the visitor to an automatically-generated hybrid web page that combines visual "look and feel" elements from the host website and product information from the third-party merchant's website related to the clicked advertisement. [] In this way, rather than instantly losing visitors to the third-party's website, the host website can instead send its visitors to a web page on the outsource provider's server that 1) incorporates "look and feel" elements from the host website, and 2) provides visitors with the opportunity to purchase products from the third-party merchant without actually entering that merchant's website. "

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

As the court cautioned, “not all claims purporting to address Internet-centric challenges are eligible,” but in this case these additional limitations amount to more than simply stating “apply the abstract idea on the Internet.” Therefore, when taken as a whole, the claimed invention has additional limitations that amount to significantly more than the abstract idea. Under this reasoning, **the claim recites patent eligible subject matter (Step 2B: YES).**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;

(i) wherein each of the first web pages belongs to one of a plurality of web page owners;

(ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;

(ii) automatically identify as the source page the one of the first web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

PTO Abstract Idea Example 2

Analysis

As the court cautioned, “not all claims purporting to address Internet-centric challenges are eligible,” but in this case these additional limitations amount to more than simply stating “apply the abstract idea on the Internet.” Therefore, when taken as a whole, the claimed invention has additional limitations that amount to significantly more than the abstract idea. Under this reasoning, **the claim recites patent eligible subject matter (Step 2B: YES).**

Th[is] claim was found eligible by the Federal Circuit in *DDR Holdings, LLC v. Hotels.com et al.*, 113 USPQ2d 1097 (Fed. Cir. 2014) (DDR). The patent at issue was U.S. Patent No. 7,818,399.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** Next, the claim as a whole is analyzed to determine if there are additional limitations recited in the claim such that the claim amounts to significantly more than the mathematical operation.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** There are several additional limitations recited in the claim besides the mathematical operation of generating a blue noise mask.

First, the claim recites using a processor to generate the blue noise mask.

The claim also recites the steps of storing the blue noise mask in a first memory location and receiving a gray scale image and storing the gray scale image in a second memory location.

Thus, the claim uses a processor and memory to perform these steps of calculating a mathematical operation and receiving and storing data.

The addition of general purpose computer components alone to perform such steps is not sufficient to transform a judicial exception into a patentable invention.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** The computer components are recited at a **high level of generality and perform the basic functions of a computer** (in this case, performing a mathematical operation and receiving and storing data) **that would be needed to apply the abstract idea via computer.**

Merely using generic computer components to perform the above identified basic computer functions to practice or apply the judicial exception does not constitute a meaningful limitation that would amount to significantly more than the judicial exception, **even though such operations could be performed faster than without a computer.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** The claim also recites the additional steps of comparing the blue noise mask to a gray scale image to transform the gray scale image to a binary image array and converting the binary image array into a halftoned image. **These additional steps tie the mathematical operation (the blue noise mask) to the processor's ability to process digital images.** These steps **add meaningful limitations** to the abstract idea of generating the blue noise mask and therefore add significantly more to the abstract idea than mere computer implementation.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** The claim, **when taken as a whole**, does not simply describe the generation of a blue noise mask via a mathematical operation and receiving and storing data, but **combines the steps** of generating a blue noise mask with the steps for comparing the image to the blue noise mask and **converting the resulting binary image array to a halftoned image**. By this, **the claim goes beyond the mere concept of simply retrieving and combining data using a computer**.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** Finally, **viewing the claim elements as an ordered combination**, the steps recited in addition to the blue noise mask **improve the functioning of the claimed computer itself**. In particular, as discussed above, the claimed process with the improved blue noise mask allows the computer to use to less memory than required for prior masks, results in faster computation time without sacrificing the quality of the resulting image as occurred in prior processes, and produces an improved digital image. **These are also improvements in the technology of digital image processing**.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** Unlike the invention in *Alice Corp.*, the instant claim is not merely limiting the abstract idea to a computer environment by simply performing the idea via a computer (*i.e.*, not merely performing routine data receipt and storage or mathematical operations on a computer), but rather is **an innovation in computer technology, namely digital image processing, which in this case reflects both an improvement in the functioning of the computer and an improvement in another technology.** Taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (*Step 2B: YES*). The claim recites patent eligible subject matter.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

- generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, with a processor on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

*** Taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (*Step 2B: YES*). **The claim recites patent eligible subject matter.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A computer-implemented method for halftoning a gray scale image, comprising the steps of:

generating, with a processor, a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;

storing the blue noise mask in a first memory location;

Th[is] hypothetical claims are modeled after the technology in Research Corporation Technologies Inc. v. Microsoft Corp., 627 F.3d 859 (Fed. Cir. 2010) (RCT). The patent at issue was U.S. Patent No. 5,111,310. Hypothetical claims 1-3 are directed to an abstract idea and have additional elements that amount to significantly more than the abstract idea because they show an improvement in the functioning of the computer itself and also show an improvement to another technology/technical field, either of which can show eligibility.

halftoned image.

PTO Abstract Idea Example 3

Analysis

*** Taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (*Step 2B: YES*). **The claim recites patent eligible subject matter.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

2. A non-transitory computer-readable medium with instructions stored thereon, that when executed by a processor, perform the steps comprising:

generating a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;

storing the blue noise mask in a first memory location;

receiving a gray scale image and storing the gray scale image in a second memory location;

comparing, on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and

converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

The claim recites the same steps as claim 1. *** Similarly, the claim recites the same additional elements of comparing the blue noise mask to a gray scale image to transform the gray scale image to a binary image array and converting the binary image array into a halftoned image. These additional elements add significantly more to the abstract idea as evidenced by the improved functioning of the computer in halftoning a gray scale image and the improved digital image processing. **For the same reasons set forth above,** taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (*Step 2B: YES*). The claim recites patent eligible subject matter.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

2. A non-transitory computer-readable medium with instructions stored thereon, that when executed by a processor, perform the steps comprising:

- generating a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

The claim recites the same steps as claim 1. *** Similarly, the claim recites the same additional elements of comparing the blue noise mask to a gray scale image to transform the gray scale image to a binary image array; to the abstract idea as evidenced by the improved functioning of the computer in halftoning a gray scale image and the improved digital image processing. **For the same reasons set forth above**, taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (Step 2B: YES). The claim recites patent eligible subject matter.

Form of the claims does not affect the analysis.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

2. A non-transitory computer-readable medium with instructions stored thereon, that when executed by a processor, perform the steps comprising:

- generating a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- storing the blue noise mask in a first memory location;
- receiving a gray scale image and storing the gray scale image in a second memory location;
- comparing, on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array; and
- converting the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

The claim recites the same steps as claim 1. *** Similarly, the claim recites the same additional elements of comparing the blue noise mask to a gray scale image to transform the gray scale image to a binary image array; to the abstract idea as evidenced by the improved functioning of the computer in halftoning a gray scale image and the improved digital image processing. **For the same reasons set forth above**, taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (Step 2B: YES). The claim recites patent eligible subject matter.

[This] hypothetical claims are modeled after the technology in Research Corporation Technologies Inc. v. Microsoft Corp., 627 F.3d 859 (Fed. Cir. 2010) (RCT). The patent at issue was U.S. Patent No. 5,111,310. Hypothetical claims 1-3 are directed to an abstract idea and have additional elements that amount to significantly more than the abstract idea because they show an improvement in the functioning of the computer itself and also show an improvement to another technology/technical field, either of which can show eligibility.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

3. A system for halftoning a gray scale image, comprising:

- a processor that generates a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- a first memory for storing the blue noise mask; and
- a second memory for storing a received gray scale image;

wherein the processor further compares, on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array and converts the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

Similarly, the claim recites the same additional elements that compare the blue noise mask to a gray scale image to transform the gray scale image to a binary image array and convert the binary image array into a halftoned image that add significantly more to the abstract idea. For the same reasons set forth above, taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (*Step 2B: YES*). The claim recites patent eligible subject matter.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

3. A system for halftoning a gray scale image, comprising:

- a processor that generates a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;
- a first memory for storing the blue noise mask; and
- a second memory for storing a received gray scale image;

wherein the processor further compares, on a pixel-by-pixel basis, each pixel of the gray scale image to a threshold number in the corresponding position of the blue noise mask to produce a binary image array and converts the binary image array to a halftoned image.

PTO Abstract Idea Example 3

Analysis

Similarly, the claim recites the same additional elements that compare the blue noise mask to a gray scale image to transform the gray scale image to a binary image array and convert the binary image array into a halftoned image that add significantly more to the abstract idea. For the same reasons set forth above, taking all the additional claim elements individually, and in combination, the claim as a whole amounts to significantly more than the abstract idea of generating a blue noise mask (*Step 2B: YES*). The claim recites patent eligible subject matter.

Form of the claims does not affect the analysis.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

3. A system for halftoning a gray scale image, comprising:

a processor that generates a blue noise mask by encoding changes in pixel values across a plurality of blue noise filtered dot profiles at varying gray levels;

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PTO Abstract Idea Example 3

Analysis

Similarly, the claim recites the same additional elements that compare the blue noise mask to a gray scale image to transform the gray scale image to a binary image array and convert the binary

This] hypothetical claims are modeled after the technology in Research Corporation Technologies Inc. v. Microsoft Corp., 627 F.3d 859 (Fed. Cir. 2010) (RCT). The patent at issue was U.S. Patent No. 5,111,310. Hypothetical claims 1-3 are directed to an abstract idea and have additional elements that amount to significantly more than the abstract idea because they show an improvement in the functioning of the computer itself and also show an improvement to another technology/technical field, either of which can show eligibility.

to produce a binary image array and converts the binary image array to a halftoned image.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A system for calculating an absolute position of a GPS receiver and an absolute time of reception of satellite signals comprising:

a mobile device comprising a GPS receiver, a display, a microprocessor and a wireless communication transceiver coupled to the GPS receiver, the mobile device programmed to receive PN codes sent by a plurality of GPS satellites, calculate pseudo-ranges to the plurality of GPS satellites by averaging the received PN codes, and transmit the pseudo-ranges, and

a server comprising a central processing unit, a memory, a clock, and a server communication transceiver that receives pseudo-ranges from the wireless communication transceiver of the mobile device, the memory having location data stored therein for a plurality of wireless towers, and the central processing unit programmed to:

estimate a position of the GPS receiver based on location data for a wireless tower from the memory and time data from the clock, calculate absolute time that the signals were sent from the GPS satellites using the pseudo-ranges from the mobile device and the position estimate,

create a mathematical model to calculate absolute position of the GPS receiver based on the pseudo-ranges and calculated absolute time, calculate the absolute position of the GPS receiver using the mathematical model, and

transmit the absolute position of the GPS receiver to the mobile device, via the server communication transceiver, for visual representation on the display.

PTO Abstract Idea Example 4

Analysis

Next, the claim as a whole is analyzed to determine whether any element, or combination of elements, is sufficient to ensure that the claim amounts to significantly more than the exception.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A system for calculating an absolute position of a GPS receiver and an absolute time of reception of satellite signals comprising:
 a mobile device comprising a GPS receiver, a display, a microprocessor and a wireless communication transceiver coupled to the GPS receiver, the mobile device programmed to receive PN codes sent by a plurality of GPS satellites, calculate pseudo-ranges to the plurality of GPS satellites by averaging the received PN codes, and transmit the pseudo-ranges, and
 a server comprising a central processing unit, a memory, a clock, and a server communication transceiver that receives pseudo-ranges from the wireless communication transceiver of the mobile device, the memory having location data stored therein for a plurality of wireless towers, and the central processing unit programmed to:
 estimate a position of the GPS receiver based on location data for a wireless tower from the memory and time data from the clock, calculate absolute time that the signals were sent from the GPS satellites using the pseudo-ranges from the mobile device and the position estimate,
 create a mathematical model to calculate absolute position of the GPS receiver based on the pseudo-ranges and calculated absolute time, calculate the absolute position of the GPS receiver using the mathematical model, and
 transmit the absolute position of the GPS receiver to the mobile device, via the server communication transceiver, for visual representation on the display.

PTO Abstract Idea Example 4

Analysis

First, the claim recites using a central processing unit (CPU) for performing the mathematical operations of estimating position, calculating absolute time, and calculating absolute position using a mathematical model. The claim also recites using location data stored in a memory, and time data from a clock. **These computer components are recited at a high level of generality and add no more to the claimed invention than the components that perform basic mathematical calculation functions routinely provided by a general purpose computer.** Limiting performance of the mathematical calculations to a general purpose CPU, **absent more**, is not sufficient to transform the recited judicial exception into a patent-eligible invention.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A system for calculating an absolute position of a GPS receiver and an absolute time of reception of satellite signals comprising:
 a mobile device comprising a GPS receiver, a display, a microprocessor and a wireless communication transceiver coupled to the GPS receiver, the mobile device programmed to receive PN codes sent by a plurality of GPS satellites, calculate pseudo-ranges to the plurality of GPS satellites by averaging the received PN codes, and transmit the pseudo-ranges, and
 a server comprising a central processing unit, a memory, a clock, and a server communication transceiver that receives pseudo-ranges from the wireless communication transceiver of the mobile device, the memory having location data stored therein for a plurality of wireless towers, and the central processing unit programmed to:
 estimate a position of the GPS receiver based on location data for a wireless tower from the memory and time data from the clock, calculate absolute time that the signals were sent from the GPS satellites using the pseudo-ranges from the mobile device and the position estimate,
 create a mathematical model to calculate absolute position of the GPS receiver based on the pseudo-ranges and calculated absolute time, calculate the absolute position of the GPS receiver using the mathematical model, and
 transmit the absolute position of the GPS receiver to the mobile device, via the server communication transceiver, for visual representation on the display.

PTO Abstract Idea Example 4

Analysis

However, **the claim is further limited** to a mobile device comprising a GPS receiver, microprocessor, wireless communication transceiver and a display that receives satellite data, calculates pseudo-ranges, wirelessly transmits the calculated pseudo-ranges to the server, receives location data from the server, and displays a visual representation of the received calculated absolute position from the server. **The programmed CPU acts in concert with the recited features of the mobile device to enable the mobile device to determine and display its absolute position through interaction with a remote server and multiple remote satellites.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A system for calculating an absolute position of a GPS receiver and an absolute time of reception of satellite signals comprising:
 a mobile device comprising a GPS receiver, a display, a microprocessor and a wireless communication transceiver coupled to the GPS receiver, the mobile device programmed to receive PN codes sent by a plurality of GPS satellites, calculate pseudo-ranges to the plurality of GPS satellites by averaging the received PN codes, and transmit the pseudo-ranges, and
 a server comprising a central processing unit, a memory, a clock, and a server communication transceiver that receives pseudo-ranges from the wireless communication transceiver of the mobile device, the memory having location data stored therein for a plurality of wireless towers, and the central processing unit programmed to:
 estimate a position of the GPS receiver based on location data for a wireless tower from the memory and time data from the clock, calculate absolute time that the signals were sent from the GPS satellites using the pseudo-ranges from the mobile device and the position estimate,
 create a mathematical model to calculate absolute position of the GPS receiver based on the pseudo-ranges and calculated absolute time, calculate the absolute position of the GPS receiver using the mathematical model, and
 transmit the absolute position of the GPS receiver to the mobile device, via the server communication transceiver, for visual representation on the display.

PTO Abstract Idea Example 4

Analysis

*** The **meaningful limitations** placed upon the application of the claimed mathematical operations **show that the claim is not directed to performing mathematical operations on a computer alone**. Rather, the combination of elements impose meaningful limits in that the **mathematical operations are applied to improve an existing technology** (global positioning) by improving the signal-acquisition sensitivity of the receiver to **extend the usefulness of the technology** into weak-signal environments and providing the location information for display on the mobile device. All of these features, especially when viewed in combination, amount to significantly more than the judicial exception (Step 2B: YES). **The claim is eligible.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim With Enough More

1. A system for calculating an absolute position of a GPS receiver and an absolute time of reception of satellite signals comprising:
 a mobile device comprising a GPS receiver, a display, a microprocessor and a wireless communication transceiver coupled to the GPS receiver, the mobile device programmed to receive PN codes sent by a plurality of GPS satellites, calculate pseudo-ranges to the plurality of GPS satellites by averaging the received PN codes, and transmit the pseudo-ranges, and
 a server comprising a central processing unit, a memory, a clock, and a server communication transceiver that receives pseudo-ranges from the wireless communication transceiver of the mobile device, the memory having location data stored therein for a plurality of wireless towers, and the central processing unit programmed to:
 estimate a position of the GPS receiver based on location data for a wireless tower from the memory and time data from the clock, calculate absolute time that the signals were sent from the GPS satellites using the pseudo-ranges from the mobile device and the position estimate,
 create a mathematical model to calculate absolute position of the GPS receiver based on the pseudo-ranges and calculated absolute time, calculate the absolute position of the GPS receiver using the mathematical model, and
 transmit the absolute position of the GPS receiver to the mobile device, via the server communication transceiver, for visual representation on the display.

PTO Abstract Idea Example 4

Analysis

*** The **meaningful limitations** placed upon the application of the claimed mathematical operations **show that the claim is not directed to performing mathematical operations on a**

Th[is] hypothetical claims are modeled after the technology in *SIRF Technology Inc. v. International Trade Commission*, 601 F.3d 1319 (Fed. Cir. 2010) (SIRF Tech). The patent at issue was U.S. Patent No. 6,417,801. Hypothetical claims 1 and 2 are directed to an abstract idea and have additional elements that amount to significantly more than the abstract idea because they show an improvement to another technology or technical field.

providing the location information for display on the mobile device. All of these features, especially when viewed in combination, amount to significantly more than the judicial exception (Step 2B: YES). **The claim is eligible.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

10. A method of generating a device profile that describes properties of a device in a digital image reproduction system for capturing, transforming or rendering an image, said method comprising:

generating first data for describing a device dependent transformation of color information content of the image to a device independent color space through use of measured chromatic stimuli and device response characteristic functions;

generating second data for describing a device dependent transformation of spatial information content of the image in said device independent color space through use of spatial stimuli and device response characteristic functions; and combining said first and second data into the device profile.

PTO Abstract Idea Example 5

Analysis

*** The claim does not include additional elements beyond the abstract idea of gathering and combining data. Therefore, the claim does not amount to more than the abstract idea itself (*Step 2B: NO*). **The claim is not patent eligible.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

10. A method of generating a device profile that describes properties of a device in a digital image reproduction system for capturing, transforming or rendering an image, said method comprising:

generating first data for describing a device dependent transformation of color information content of the image to a device independent color space through use of measured chromatic stimuli and device response characteristic functions;

generating second data for describing a device dependent transformation of spatial information content of the image in said device independent color space through use of spatial stimuli and device response characteristic functions; and combining said first and second data into the device profile.

PTO Abstract Idea Example 5

Analysis

*** The claim does not include additional elements beyond the abstract idea of gathering and combining data. Therefore, the claim does not amount to more than the abstract idea itself (*Step 2B: NO*). **The claim is not patent eligible.**

Th[is] claim was found ineligible by the Federal Circuit in *Digitech Image Tech., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 6,128,415. The claim is directed to an abstract idea and does not have any additional elements that could amount to more than the abstract idea itself.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

Claim 1. A system for managing a game of Bingo which comprises:

- (a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;
- (b) an input and output terminal connected to the CPU and memory of the computer; and (c) a program in the computer enabling:
 - (i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;
 - (ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;
 - (iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;
 - (iv) retrieval of the group using the player identifier;
 - (v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;
 - (vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;
 - (vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and
 - (viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

PTO Abstract Idea Example 6

Analysis

*** Next, the claim is analyzed to determine whether there are additional limitations recited that amount to significantly more than the abstract idea.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

Claim 1. A system for managing a game of Bingo which comprises:

- (a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;
- (b) an input and output terminal connected to the CPU and memory of the computer; and (c) a program in the computer enabling:
 - (i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;
 - (ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;
 - (iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;
 - (iv) retrieval of the group using the player identifier;
 - (v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;
 - (vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;
 - (vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and
 - (viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

PTO Abstract Idea Example 6

Analysis

*** The claim requires the additional limitations of a computer with a central processing unit (CPU), memory, a printer, an input and output terminal, and a program. **These generic computer components are claimed to perform their basic functions of storing, retrieving and processing data through the program that enables the management of the game of Bingo. The recitation of the computer limitations amounts to mere instructions to implement the abstract idea on a computer.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

Claim 1. A system for managing a game of Bingo which comprises:

- (a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;
- (b) an input and output terminal connected to the CPU and memory of the computer; and (c) a program in the computer enabling:
 - (i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;
 - (ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;
 - (iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;
 - (iv) retrieval of the group using the player identifier;
 - (v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;
 - (vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;
 - (vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and
 - (viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

PTO Abstract Idea Example 6

Analysis

*** Taking the additional elements **individually and in combination**, the computer components at each step of the **management process perform purely generic computer functions**. As such, there is **no inventive concept sufficient to transform** the claimed subject matter into a patent-eligible application. The claim does not amount to significantly more than the abstract idea itself (*Step 2B: NO*).

Accordingly, the claim is not patent eligible.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

Claim 1. A system for managing a game of Bingo which comprises:

- (a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;
- (b) an input and output terminal connected to the CPU and memory of the computer; and (c) a program in the computer enabling:
 - (i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;
 - (ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;
 - (iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;
 - (iv) retrieval of the group using the player identifier;
 - (v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;
 - (vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;
 - (vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and
 - (viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

PTO Abstract Idea Example 6

Analysis

*** Taking the additional elements **individually and in combination**, the computer components at each step of the **management process perform purely generic computer functions**. As such, there is **no inventive concept sufficient to transform** the claimed subject matter into a

Th[is] claim was found ineligible by the Federal Circuit in *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 6,398,646. The claim is directed to an abstract idea and has additional elements that do not amount to significantly more than the abstract idea.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

1. A method, comprising:

receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;

processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party,

wherein the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction.

PTO Abstract Idea Example 7

Analysis

*** Analyzing the claim as whole for an inventive concept, the claim limitations in addition to the abstract idea include a computer application running on a computer and the computer network. This is **simply a generic recitation of a computer and a computer network performing their basic functions**. The claim amounts to no more than stating **create a contract on a computer and send it over a network**. These generic computing elements alone do not amount to significantly more than the judicial exception (*Step 2B: NO*). **The claim is not patent eligible.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

1. A method, comprising:

receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;

processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party,

wherein the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction.

PTO Abstract Idea Example 7

Analysis

*** Analyzing the claim as whole for an inventive concept, the claim limitations in addition to the abstract idea include a computer application running on a computer and the computer network. This is simply a generic recitation of a computer and a computer network performing their basic

Th[is] claim was found ineligible by the Federal Circuit in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 7,644,019. The claim is directed to an abstract idea and has additional elements that do not amount to significantly more than the abstract idea.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** Next, the claim as a whole is analyzed to determine whether it amounts to significantly more than the concept of using advertising as an exchange or currency. The claim has additional limitations to the abstract idea such as accessing and updating an activity log, requiring a request from the consumer to view the advertising, restricting public access, and using the Internet as an information transmitting medium.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** Viewing the limitations individually, the accessing and updating of an activity log are used only for data gathering and, as such, only represent insignificant pre-solution activity. Similarly, requiring a consumer request and restricting public access is insignificant pre-solution activity because such activity is necessary and routine in implementing the concept of using advertising as an exchange or currency; i.e., currency must be tendered upon request in order for access to be provided to a desired good.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** Furthermore, the Internet limitations do not add significantly more because they are **simply an attempt to limit the abstract idea to a particular technological environment.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** Viewing the limitations as a **combination**, the claim simply instructs the practitioner to implement the concept of using advertising as an exchange or currency **with routine, conventional activity specified at a high level of generality in a particular technological environment.**

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: Example from Guidelines of Claim Not Adding Enough More

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet website;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

PTO Abstract Idea Example 8

Analysis

*** When viewed either as individual limitations or as an ordered combination, the claim as a whole does not add significantly more to the abstract idea of using advertising as an exchange or currency (Step 2B: NO). **The claim is not patent eligible.**

Th[is] claim was found ineligible by the Federal Circuit in *Ultramercial v. Hulu and WildTangent*, 2014 U.S. App. LEXIS 21633 (Fed. Cir. 2014). The patent at issue was U.S. Patent No. 7,346,545. The claim is directed to an abstract idea and has additional elements that do not amount to significantly more than the abstract idea.

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Step 2B: What is not “enough” “something more”

- **Limiting the use of an abstract idea “to a particular technological environment” or “field of use”**
Bilski, 561 U.S. at 610, 612; *Alice*, 134 S. Ct. at 2358.
- **“Stating an abstract idea ‘while adding the words “apply it””**
Alice, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1294).
- **“‘Simply appending conventional steps, specified at a high level of generality,’” to the abstract idea or application of that abstract idea**
Alice, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1300).
- **The addition of conventional, obvious, or insignificant pre- or post- solution activity**
Mayo, 132 S. Ct. at 1298; *Diehr*, 450 U.S. at 191-92.
- **“[A] generic computer [performing] generic computer functions” to implement the abstract idea**
Alice, 134 S. Ct. at 2359–60 (quoting *Mayo*, 132 S. Ct. at 1297).



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Step 2B: What has been “enough” “something more”

- **Meeting the machine-or-transformation test**

–“even if the asserted claims were drawn to abstract ideas, the claims . . . satisfy the machine-or-transformation test. The implementation . . . by a computer inserts meaningful limitations . . . [and the] computer to ‘play[s] a significant part in permitting the claimed method to be performed.’ . . . Importantly, both sides concede that none of these limitations could be performed by a human alone.”

Helios Software, 2014 U.S. Dist. LEXIS 135379, at *54-55

–“even though the method does not result in the physical transformation of matter, it utilizes a system for modifying data that may have a concrete effect in the field of electronic communications.”

Card Verification Solutions, LLC v. Citigroup Inc., No. 13-cv-06339, 2014 U.S. Dist. LEXIS 137577, at *14-15 (N.D. Ill. Sept. 29, 2014)

–“The claim’s close connection to a specific machine, the seismic acquisition unit, . . . [which] does not merely substitute technology for an abstract idea, . . . is highly probative of patent-eligibility.”

Fairfield Indus. v. Wireless Seismic, Inc., No. 4:14-cv-02972, 2014 U.S. Dist. LEXIS 176599, at *15-18 (S.D. Tex. Dec. 23, 2014)



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Step 2B: What has been “enough” “something more”(continued)

- **Adding meaningful limitations that represent sufficiently inventive concepts and do not preempt the relevant field**

–“the claims at issue do not . . . preempt every application of the idea. Rather, they recite a specific way to [apply that abstract idea] in order to solve a problem faced by websites on the Internet.”

DDR Holdings, LLC v. Hotels.com, L.P., No. 13-1505, 2014 U.S. App. LEXIS 22902, at *31 (Fed. Cir. Dec. 5, 2014)

–“Despite being generally directed to abstract concepts, the asserted claims contain meaningful limitations that represent sufficiently inventive concepts . . . Although many of these limitations are mathematical algorithms, these algorithms are narrowly defined, and they are tied to a specific error correction process. These limitations are not necessary or obvious tools for achieving error correction, and they ensure that the claims do not preempt the field of error correction.”

Cal. Inst. of Tech., 2014 U.S. Dist. LEXIS 156763, at *47-48

–“The claims do not preempt all applications of providing customized web pages, as they recite a specific method of customizing web pages based on user data.”

Intellectual Ventures I, 2014 U.S. Dist. LEXIS 174725 at *25

–“Although the claim rests upon the idea of a relay system, the claim builds upon this concept by adding nonconventional elements, . . . [which] narrow the scope of the claim, and minimize the risk of preemption.”

Fairfield Indus., 2014 U.S. Dist. LEXIS 176599, at *15



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Step 2B: What has been “enough” “something more”(continued)

- **Adding narrowing limitations such that the patent is not directed to the abstract idea itself.**

–“While the patent may include or rely on some basic concepts in the design of sheet metal forming tools, the patents also include numerous limitations that narrow the scope of the patent. For example: (1) smoothing an irregular component edge . . .”

Autoform Eng'g GMBH v. Eng'g Tech. Assocs., No. 10-cv-14141, 2014 U.S. Dist. LEXIS 123684, at *7-8 (E.D. Mich. Sept. 5, 2014)

- **Adding specific technological limitations such that the method does not comprise a “mental process”**

–“an entirely plausible interpretation of the claims include a limitation requiring pseudorandom tag generating software that could not be done with pen and paper. Accordingly, Card Verification has plausibly alleged a method that does not comprise a “mental process.”

Card Verification Solutions, 2014 U.S. Dist. LEXIS 137577, at *11-12



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Step 2B: What has been “enough” “something more”(continued)

- **Limiting the claimed method to a particular technical approach**

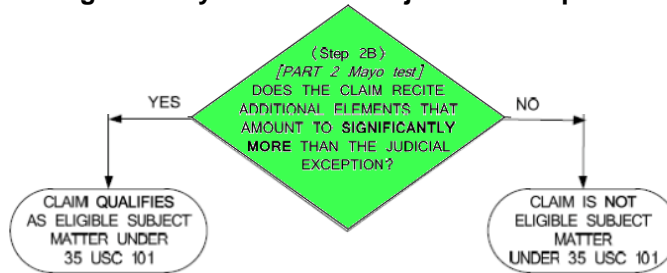
–“the claims at issue here specify how interactions with the Internet are manipulated to yield a desired result. . . . When the limitations of the . . . claims are taken together as an ordered combination, the claims recite an invention that is not merely the routine or conventional use of the Internet.”

DDR Holdings, 2014 U.S. App. LEXIS 22902, at *30-31

–one of the claims at issue was found patent eligible because, although it was directed to an abstract idea, it was limited to the “particular technical approach” of object routing

SAP America, CBM2013-00013, Paper No. 61 at 17

Step 2B: Does the claim recite additional elements that amount to significantly more than the judicial exception?



Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility

COMPACT PROSECUTION REQUIRED

*“Regardless of whether a rejection under 35 U.S.C. 101 is made, a **complete examination should be made for every claim under each of the other patentability requirements: 35 U.S.C. 102, 103, 112 and 101 (utility, inventorship and double patenting) and non statutory double patenting.**”*

Source: USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility



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Useful Resources

Federal Register Rulemaking notice:

<http://www.gpo.gov/fdsys/pkg/FR-2014-12-16/pdf/2014-29414.pdf>

USPTO Subject Matter Eligibility main page:

<http://www.uspto.gov/patent/laws-and-regulations/examination-policy/2014-interim-guidance-subject-matter-eligibility-0>

Abstract Idea Examples:

http://www.uspto.gov/patents/law/exam/abstract_idea_examples.pdf

Nature-Based Product Examples:

http://www.uspto.gov/patents/law/exam/mdc_examples_nature-based_products.pdf

ARE Patent Law Alert on USPTO Interim Patent Eligibility Guidelines:

<http://www.arelaw.com/publications/view/alert121514/>



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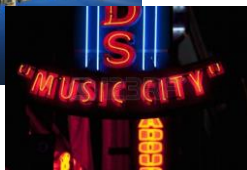


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