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Gates & Cooper LLP - Viant Howard Hughes Center 6060 Center Drive, Suite 830 Los Angeles, CA 90045			ANDREI. RADU	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 14/474,962	Applicant(s) Knapp et al.	
	Examiner RADU ANDREI	Art Unit 3682	AIA (FITF) Status Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 4/16/2019.
 A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

- 5) Claim(s) 1-20 is/are pending in the application.
 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) Claim(s) ____ is/are allowed.
- 7) Claim(s) 1-20 is/are rejected.
- 8) Claim(s) ____ is/are objected to.
- 9) Claim(s) ____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) All b) Some** c) None of the:
- 1. Certified copies of the priority documents have been received.
- 2. Certified copies of the priority documents have been received in Application No. ____.
- 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)
 Paper No(s)/Mail Date _____.
- 3) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
- 4) Other: _____.

DETAILED ACTION

The present application, filed on 9/2/2014 is being examined under the AIA first inventor to file provisions.

The following is a FINAL OFFICE ACTION in response to Applicant's amendments filed on 4/16/2019.

- a. Claims 1, 9-11, 19-20 are amended

Overall, **Claims 1-20** are pending and have been considered below.

Because the USPTO Guidelines for eligibility determination have changed during the course of the examination of the instant application (see 2019 PEG) and in view of Applicant's amendments, Examiner, based on the two-step process for analysis, will now more clearly point to material from the latest guidelines that further lay the foundation for determination that the claims are patent ineligible. This eligibility examination does not constitute new grounds of rejection.

Claim Rejections - 35 USC § 101

35 USC 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20 are rejected under 35 USC 101 because the claimed invention is not directed to patent eligible subject matter. The claimed matter is directed to a judicial exception (i.e. an abstract idea not integrated into a practical application) without significantly more.

Per Step 1 and Step 2A of the two-step eligibility analysis, independent Claim 1 and Claim 11 and the therefrom dependent claims are directed respectively to a computer

implemented method and to a system. Thus, on its face, each such independent claim and the therefrom dependent claims are directed to a statutory category of invention.

However, Claim 1, (which is repeated in Claim 11) is rejected under 35 U.S.C. 101 because the claim is directed to an abstract idea, a judicial exception, without reciting additional elements that integrate the judicial exception into a practical application. The claim recites defining publisher specifications, conducting an online auction, determining the successful bid, providing advertisements to the successful bid publisher. The limitations, as drafted, constitute a process that, under its broadest reasonable interpretation, covers commercial activity, but for the recitation of generic computer components (“in a processor in a computer”). That is, the drafted process is comparable to an advertising, business relationships (i.e. auction) process, i.e. a process aimed at providing advertisements to the successful bidder. If a claim limitation, under its broadest reasonable interpretation, covers performance of limitations of agreements in form of contracts, legal obligations, advertising, marketing, sales activities or behaviors, business relationships, but for the recitation of generic computer components, then it falls within the “Certain Methods of Organizing Human Activity – Commercial or Legal Interactions (e.g. agreements in form of contracts, legal obligations, advertising, marketing, sales activities or behaviors, business relationships)” grouping of abstract ideas. Accordingly, the claim recites an abstract idea.

This abstract idea is not integrated into a practical application. In particular, stripped of those claim elements that are directed to an abstract idea, the remaining positively recited elements of the independent claims are directed to inserting a pixel into advertisement, receiving the pixel, analyzing statistics, determining customer base. These claim elements amount to no more than insignificant extra-solution activity (MPEP 2106.05(g)). The non-positively recited claim elements are the publisher specification, the impressions, the one or more bids, the one or more publishers. While these descriptive elements may provide further helpful context for the claimed invention, they do not serve to integrate the abstract idea into a practical application. The recited computer elements, i.e. a processor, a memory, are recited at a high-level of generality (i.e. as a generic computing device performing generic computer functions of obtaining data, interpreting the obtained data and providing results), such that they amount to no more than mere instructions to apply the exception using generic computer components.

Accordingly, these additional claim elements do not integrate the abstract idea into a practical application, because they do not impose any meaningful limits on practicing the abstract idea. Per Step 2A, the claim is directed to an abstract idea not integrated into a practical application.

Step 2B of the eligibility analysis concludes that the claim does not include additional elements that are sufficient to amount to significantly more than the judicial exception. Stripped of those claim elements that are directed to an abstract idea, not integrated into a practical application, the remaining positively recited elements of the independent claims are directed to inserting a pixel into advertisement, receiving the pixel, analyzing statistics, determining customer base. When considered individually, these additional claim elements represent “Insignificant Extra-Solution (Pre-Solution and/or Post-Solution) Activity”, i.e. activities incidental to the primary process or product that are merely a nominal or tangential addition to the claims. Specifically, the limitations are considered post-solution activity because they are mere outputting or post-processing results from executing the abstract idea. (MPEP 2106.05(g)) It is readily apparent that the claim elements are not directed to any specific improvements of the claims.

Furthermore, the independent claims contain descriptive limitations, not positively recited limitations of elements found in the independent claims and addressed above, such as describing the nature, structure and/or content of the publisher specification, the impressions, the one or more bids, the one or more publishers. However, these elements do not require any steps or functions to be performed and thus do not involve the use of any computing functions. While these descriptive elements may provide further helpful context for the claimed invention, these elements do not serve to confer subject matter eligibility to the claimed invention since their individual and combined significance is still not heavier than the abstract concepts at the core of the claimed invention.

After stripping away the abstract idea claim elements, the additional positively recited steps and descriptive claim elements, the only remaining elements of the independent claims are directed to a processor, a memory. When considered individually, these additional claim elements serve merely to implement the abstract idea using computer components performing computer functions. They do not constitute “Improvements to the Functioning of a Computer or

to Any Other Technology or Technical Field”. (MPEP 2106.05(a)) It is readily apparent that the claim elements are not directed to any specific improvements of any of these areas.

When the independent claims are considered as a whole, as a combination, the claim elements noted above do not amount to any more than they amount to individually. The operations appear to merely apply the abstract concept to a technical environment in a very general sense – i.e. a computer receives information from another computer, processes that information and then sends a response based on processing results. The most significant elements of the claims, that is the elements that really outline the inventive elements of the claims, are set forth in the elements identified as an abstract idea. Therefore, it is concluded that the elements of the independent claims are directed to one or more abstract ideas and do not amount to significantly more. (MPEP 2106.05)

Further, Step 2B of the analysis takes into consideration all dependent claims as well, both individually and as a whole, as a combination.

Dependent Claims 6-7 (which are repeated in Claims 16-17) are not directed to any additional abstract ideas, but are directed to additional claim elements such as to soliciting one or more bids, displaying a closing price. When considered individually, these additional claim elements represent “Insignificant Extra-Solution (Pre-Solution and/or Post-Solution) Activity”, i.e. activities incidental to the primary process or product that are merely a nominal or tangential addition to the claims. Specifically, soliciting one or more bids are considered pre-solution activity because they are mere gathering or pre-processing data/information in conjunction with the abstract idea, while displaying a closing price are considered post-solution activity because they are mere outputting or post-processing results from executing the abstract idea. (MPEP 2106.05(g)) It is readily apparent that the claim elements are not directed to any specific improvements of the claims.

Dependent Claim 9 (which is repeated in Claim 19) is not directed to any additional abstract ideas, but is directed to additional claim elements such as to determining a reach and frequency that the publisher can fulfill. When considered individually, these additional claim elements represent “Insignificant Extra-Solution (Pre-Solution and/or Post-Solution) Activity”, i.e. activities incidental to the primary process or product that are merely a nominal or tangential addition to the claims. Specifically, the limitations are considered post-solution activity because they are mere outputting or post-processing results from executing the abstract idea. (MPEP

2106.05(g)) It is readily apparent that the claim elements are not directed to any specific improvements of the claims.

Dependent Claims 2-5, 8, 10 (which are repeated in Claims 12-15, 18, 20 respectively) are not directed to any abstract ideas and are not directed to any additional non-abstract claim elements. Rather, these non-positively recited claims provide further descriptive limitations of elements, such as describing the nature, structure and/or content of the publisher specification, the auction, publisher's pixel. However, these elements do not require any steps or functions to be performed and thus do not involve the use of any computing functions. While these descriptive elements may provide further helpful context for the claimed invention, these elements do not serve to confer subject matter eligibility to the invention since their individual and combined significance is still not heavier than the abstract concepts at the core of the claimed invention.

Moreover, the claims in the instant application do not constitute significantly more also because the claims or claim elements only serve to implement the abstract idea using computer components to perform computing functions (*Enfish*, MPEP 2106.05(a)). Specifically, the computing system encompasses general purpose hardware and software modules, as disclosed in the application specification in fig2 and [0028]-[0036], including among others general purpose processor, memory, GUI, pointing device, keyboard printer, and OS.

When the dependent claims are considered as a whole, as a combination, the additional elements noted above appear to merely apply the abstract concept to a technical environment in a very general sense – i.e. a computer receives information from another computer, processes that information and then sends a response based on processing results. The most significant elements of the claims, that is the elements that really outline the inventive elements of the claims, are set forth in the elements identified in the independent claims as an abstract idea. The fact that the computing devices are facilitating the abstract concept is not enough to confer statutory subject matter eligibility. In sum, the additional elements do not serve to confer subject matter eligibility to the invention since their individual and combined significance is still not heavier than the abstract concepts at the core of the claimed invention. Therefore, it is concluded that the dependent claims of the instant application do not amount to significantly more either. (MPEP 2106.05)

Therefore, Claims 1-20 are rejected under 35 USC 101 as being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained through the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- i. Determining the scope and contents of the prior art.
- ii. Ascertaining the differences between the prior art and the claims at issue.
- iii. Resolving the level of ordinary skill in the pertinent art.
- iv. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 7, 10-15, 17, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney (US 2015/0095166), in view of Umeda (US 2013/0066725), in further view of Rabbitt et al (US 10,108,971).

Regarding Claims 1, 11 – Sweeney discloses: A computer-implemented method for bidding for an advertising impression, comprising:

(a) a server computer having a processor and memory; {see at least fig1, rc18, rc20, [0063]-[0065] server (reads implicitly on processor and memory)}

(b) an advertising exchange application executed by the processor on the server {see at least fig1, rc18, rc20, [0063]-[0065] the platform may include an ad exchange}

conducting an online based auction comprising a reverse auction by receiving, via the Internet network, one or more bids from one or more publishers, {see at least [0113]-[0123] bidding period ... reverse auction ... impressions awarded to publishers (reads on reverse auction); figs8A-8C, [0204] process of reverse auction}

wherein the one or more bids comply with the publisher specification, and {see at least [0028]-[0029] publisher ... attribute ... control quality attribute ... impression attribute; [0059] reverse auction ... content quality attribute; [0143] advertise campaign parameters (reads on publisher specification)}

wherein the one or more publishers have impressions to sell to the advertising purchaser; {see at least [0116], [0122] publishers ... number of impressions}

determining, in a processor in a computer, which of the one or more publishers has provided a successful bid; and {see at least [0119]-[0123] winning bid ... auction winner; [0204] win notification}

enabling, via the processor in the computer, the advertising purchaser to provide, via the Internet network, one or more advertisements, for use in the impressions, to the one or more publishers that provided the successful bid. {see at least figs8A-8C, [0204] upload creatives; fig5, [0122] find bid information}

Sweeney does not disclose, however, Umeda discloses:

defining, via input from an advertising purchaser, a publisher specification, {see at least fig18, rc1804, [0242] cost-per-mille or other suggested selling price provided by publisher ... advertisement attributes associated with the impression (reads on publisher specification)}

wherein the publisher specification comprises impression information regarding impressions desired by the advertising purchaser, {see at least fig18, rc1804, [0242] advertisement attributes associated with the impression ... provide by publisher (reads on publisher specification)}

wherein the impressions comprise individual instances when an online advertisement is shown to a particular user via an Internet network; {see at least [0051] user views the Internet ... reads on impressions provided over the Internet; [0182]-[0183] internet campaigns; [0199] Internet market}

collecting statistics of users receiving the one or more advertisements ...; and {see at least fig18, rc1814, [0249] the platform collects statistics related to ad campaigns}

analyzing the statistics and {see at least fig18, rc1816, [0250] evaluates various statistics}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney to include the elements of Umeda. One would have been motivated to do so, in order to better target the auction. Furthermore, the Supreme Court has supported that combining well known prior art elements, in a well-known manner, to obtain predictable results is sufficient to determine an invention obvious over such combination (see *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S.,82 USPQ2d 1385 (2007) & MPEP 2143). In the instant case, Sweeney evidently discloses conducting a reverse auction, determining a successful bid

and providing the advertisement. Umeda is merely relied upon to illustrate the functionality of a publisher specification in the same or similar context. As best understood by Examiner, since both conducting a reverse auction, determining a successful bid and providing the advertisement, as well as a publisher specification are implemented through well-known computer technologies in the same or similar context, combining their features as outlined above using such well-known computer technologies (i.e., conventional software/hardware configurations), would be reasonable, according to one of ordinary skill in the art. Moreover, since the elements disclosed by Sweeney, as well as Umeda would function in the same manner in combination as they do in their separate embodiments, it would be reasonable to conclude that their resulting combination would be predictable. Accordingly, the claimed subject matter is obvious over Sweeney / Umeda.

Sweeney, Umeda does not disclose, however, Rabbitt discloses:

the publisher that provided the successful bid inserting a publisher's pixel into the one or more advertisements; {see at least (53)-(54)/[12:13-37] pixel placed in each advertisement (reads on inserting); (31)/[6:35-60] pixel tracks publisher-advertiser relationship ("bids") (reads on auction)}

the advertising purchaser receiving the publisher's pixel and {see at least (53)-(54)/[12:13-37] impressions can be tracked (reads on receiving the pixel);}

... based on the publisher's pixel {see at least {see at least (53)-(54)/[12:13-37] pixel placed in each advertisement (reads on inserting)}

determining one or more user bases of the one or more publishers {see at least fig4, (27)/[5:20-42], (31)/[6:35-60] pixel tracks publisher-advertiser relationship ("bids"); (34)/[7:13-32] list of advertiser affiliated with the publisher (reads on user base); [claim5], [claim14] publisher-advertiser relationship (reads on user base)

... based on the publisher's pixel, during the online based auction, ... {see at least (53)-(54)/[12:13-37] pixel placed in each advertisement (reads on inserting); (31)/[6:35-60] pixel tracks publisher-advertiser relationship ("bids") (reads on auction)}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda to include the elements of Rabbitt. One would have been motivated to do so, in order to create, update and keep track of a user database. Furthermore, the Supreme Court has supported that combining well known prior art elements, in a well-known manner, to obtain predictable results is sufficient to determine an invention obvious over such combination

(see *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S., 82 USPQ2d 1385 (2007) & MPEP 2143). In the instant case, Sweeney, Umeda evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement. Rabbitt is merely relied upon to illustrate the functionality of inserting pixels in advertisements, as well as collecting and analyzing statistics about users in the same or similar context in the same or similar context. As best understood by Examiner, since both conducting a reverse auction, determining a successful bid and providing the advertisement, as well as inserting pixels in advertisements, as well as collecting and analyzing statistics about users in the same or similar context are implemented through well-known computer technologies in the same or similar context, combining their features as outlined above using such well-known computer technologies (i.e., conventional software/hardware configurations), would be reasonable, according to one of ordinary skill in the art. Moreover, since the elements disclosed by Sweeney, Umeda, as well as Rabbitt would function in the same manner in combination as they do in their separate embodiments, it would be reasonable to conclude that their resulting combination would be predictable. Accordingly, the claimed subject matter is obvious over Sweeney, Umeda / Rabbitt.

Regarding Claims 2, 12 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11. Sweeney further discloses: wherein the publisher specification comprises:

a maximum price {see at least [0068] bid rate; [0176] max bid; [claim 25] maximum bid}; a total number of impressions {see at least [0068] maximum number of impressions}; and an impression per user frequency. {see at least [0101] frequency ... optimal amount of frequency}

Regarding Claims 3, 13 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11. Umeda further discloses: wherein the publisher specification comprises:

an identification of one or more users. {see at least fig 13A, [0173]-[0174], [0178] cookies to track users (reads on user identification)}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include additional elements of Umeda. One would have been motivated to do so, in order to create and keep track of a user database. In the instant case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement (as discussed above in reference to Claims 1, 11). Umeda is merely relied upon to illustrate the additional functionality of a user identification in the same or similar context. Since the subject matter is merely a combination of old elements,

and in the combination each element would have performed the same function it performed separately, one having ordinary skill in the art before the effective filing date would have recognized that the results of the combination were predictable.

Regarding Claims 4, 14 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11.

Umeda further discloses: wherein the publisher specification comprises:

an identification of a user demographic. {see at least [0036] user demography; [0233], [0238] demographic targeting; [0242] demographic data of a user; [0248] user demography}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include additional elements of Umeda. One would have been motivated to do so, in order to create and keep track of a user database. In the instant case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement (as discussed above in reference to Claims 1, 11). Umeda is merely relied upon to illustrate the additional functionality of a user demographic identification in the same or similar context. Since the subject matter is merely a combination of old elements, and in the combination each element would have performed the same function it performed separately, one having ordinary skill in the art before the effective filing date would have recognized that the results of the combination were predictable.

Regarding Claims 5, 15 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11.

Umeda further discloses: wherein the publisher specification comprises:

an impression quality rank that is based on a measure of a probability of an actual advertising impression being seen and acted upon by an end consumer. {see at least fig14, rc1425, [0159] ... the ad platform determines the probability of occurrence of each possible user interaction with the advertisement within that partition. Further, the ad platform utilizes a weighed score associated with each user interaction, where the weighted score reflects the value of each user interaction within that partition to the advertiser.}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include additional elements of Umeda. One would have been motivated to do so, in order to structure the impression database (ranking allows for a faster selection). In the instant case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement (as discussed

above in reference to Claims 1, 11). Umeda is merely relied upon to illustrate the additional functionality of a ranking impressions in the same or similar context. Since the subject matter is merely a combination of old elements, and in the combination each element would have performed the same function it performed separately, one having ordinary skill in the art before the effective filing date would have recognized that the results of the combination were predictable.

Regarding Claims 7, 17 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11. Umeda further discloses:

displaying a closing price of the auction. {see at least [0171] publishers to track such saved ads and count the effective impressions from replays towards the determination of final cost of the ad campaign (reads implicitly on disclosing the closing price; it's need to determine the final cost of the ad campaign)}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include additional elements of Umeda. One would have been motivated to do so, in order to augment the credibility into the process by making it more transparent. In the instant case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement (as discussed above in reference to Claims 1, 11). Umeda is merely relied upon to illustrate the additional functionality of displaying a closing price in the same or similar context. Since the subject matter is merely a combination of old elements, and in the combination each element would have performed the same function it performed separately, one having ordinary skill in the art before the effective filing date would have recognized that the results of the combination were predictable.

Regarding Claims 10, 20 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11. Umeda further discloses:

wherein the publisher's pixel comprises a user identification. {see at least fig13A, [0173]-[0174], [0178] cookies to track users (reads on user identification)}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include additional elements of Umeda. One would have been motivated to do so, in order to create and keep track of a user database. In the instant

case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement (as discussed above in reference to Claims 1, 11). Umeda is merely relied upon to illustrate the additional functionality of a user identification in the same or similar context. Since the subject matter is merely a combination of old elements, and in the combination each element would have performed the same function it performed separately, one having ordinary skill in the art before the effective filing date would have recognized that the results of the combination were predictable.

Claims 6, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney (US 2015/0095166), in view of Umeda (US 2013/0066725), in further view of Rabbitt et al (US 10,108,971), in further view of Cochran et al (US 20090125398).

Regarding Claims 6, 16 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11. Sweeney, Umeda, Rabbitt does not disclose, however, Cochran discloses:

soliciting the one or more bids, from the one or more publishers, based on the publisher specification. {see at least [0023], [0052], [0054], [0069]-[0070] soliciting bids}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include the elements of Cochran. One would have been motivated to do so, in order to control the starting of the auction process. Furthermore, the Supreme Court has supported that combining well known prior art elements, in a well-known manner, to obtain predictable results is sufficient to determine an invention obvious over such combination (see *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S., 82 USPQ2d 1385 (2007) & MPEP 2143). In the instant case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement. Cochran is merely relied upon to illustrate the functionality of soliciting bids in the same or similar context. As best understood by Examiner, since both conducting a reverse auction, determining a successful bid and providing the advertisement, as well as soliciting bids are implemented through well-known computer technologies in the same or similar context, combining their features as outlined above using such well-known computer technologies (i.e., conventional software/hardware configurations), would be reasonable, according to one of ordinary skill in the art. Moreover, since the elements disclosed by Sweeney, Umeda, Rabbitt, as well as Cochran would function in the same manner in combination as they do in their separate embodiments, it would be reasonable to conclude that their resulting combination

would be predictable. Accordingly, the claimed subject matter is obvious over Sweeney, Umeda, Rabbitt / Cochran.

Claims 8, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney (US 2015/0095166), in view of Umeda (US 2013/0066725), in further view of Rabbitt et al (US 10,108,971), in further view of Singh et al (US 2009/0293067).

Regarding Claims 8, 18 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11. Sweeney, Umeda, Rabbitt does not disclose, however, Singh discloses:

wherein the auction is conducted at regularly defined time intervals. {see at least [0031] bids accepted at a particular time ... at periodic times (reads on regularly defined time intervals)}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include the elements of Singh. One would have been motivated to do so, in order to improve the auction odds of success by spreading the auction in time at regular intervals. Furthermore, the Supreme Court has supported that combining well known prior art elements, in a well-known manner, to obtain predictable results is sufficient to determine an invention obvious over such combination (see *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S., 82 USPQ2d 1385 (2007) & MPEP 2143). In the instant case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement. Singh is merely relied upon to illustrate the functionality of an auction conducted at regular intervals in the same or similar context. As best understood by Examiner, since both conducting a reverse auction, determining a successful bid and providing the advertisement, as well as auction conducted at regular intervals are implemented through well-known computer technologies in the same or similar context, combining their features as outlined above using such well-known computer technologies (i.e., conventional software/hardware configurations), would be reasonable, according to one of ordinary skill in the art. Moreover, since the elements disclosed by Sweeney, Umeda, Rabbitt, as well as Singh would function in the same manner in combination as they do in their separate embodiments, it would be reasonable to conclude that their resulting combination would be predictable. Accordingly, the claimed subject matter is obvious over Sweeney, Umeda, Rabbitt / Singh.

Claims 9, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney (US 2015/0095166), in view of Umeda (US 2013/0066725), in further view of Rabbitt et al (US 10,108,971), in further view of Chandler-Pepelnjak et al (US 2003/0074252).

Regarding Claims 9, 19 – Sweeney, Umeda, Rabbitt discloses the limitations of Claims 1, 11. Sweeney, Umeda, Rabbitt does not disclose, however, Chandler-Pepelnjak discloses:

determining, ... a reach and frequency that the publisher, that provided the successful bid, can fulfill. {see at least [0030]-[0031] determining the reach and the frequency}

In addition, it would have been obvious to one of ordinary skill in the art, at the time of filing, to modify Sweeney, Umeda, Rabbitt to include the elements of Chandler-Pepelnjak. One would have been motivated to do so, in order to gauge the performance of a publisher. Furthermore, the Supreme Court has supported that combining well known prior art elements, in a well-known manner, to obtain predictable results is sufficient to determine an invention obvious over such combination (see *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S., 82 USPQ2d 1385 (2007) & MPEP 2143). In the instant case, Sweeney, Umeda, Rabbitt evidently discloses conducting a reverse auction, determining a successful bid and providing the advertisement. Chandler-Pepelnjak is merely relied upon to illustrate the functionality of determining the reach and frequency of a publisher in the same or similar context. As best understood by Examiner, since both conducting a reverse auction, determining a successful bid and providing the advertisement, as well as determining the reach and frequency of a publisher are implemented through well-known computer technologies in the same or similar context, combining their features as outlined above using such well-known computer technologies (i.e., conventional software/hardware configurations), would be reasonable, according to one of ordinary skill in the art. Moreover, since the elements disclosed by Sweeney, Umeda, Rabbitt, as well as Chandler-Pepelnjak would function in the same manner in combination as they do in their separate embodiments, it would be reasonable to conclude that their resulting combination would be predictable. Accordingly, the claimed subject matter is obvious over Sweeney, Umeda, Rabbitt / Chandler-Pepelnjak.

Response to Amendments/Arguments

Applicant's remarks filed on 4/16/2019 have been fully considered.

Applicant respectfully disagrees with the OA conclusions and asserts that the presented claims fully comply with the requirements of 35 U.S.C. § 101. Further, Applicant is of the opinion that the prior art fails to teach Applicant's invention.

Examiner respectfully disagrees in both regards.

With respect to Applicant's Remarks as to the claims being rejected under 35 USC § 101.

Applicant submits:

A. The pending claims are not directed to a judicial exception.

B. The pending claims contain an inventive concept. Furthermore, Applicant asserts that the Office has failed to meet its burden to establish that the pending claims do not contain an inventive concept.

Examiner responds – The arguments have been considered in light of Applicants' amendments to the claims. The arguments ARE NOT PERSUASIVE. Therefore, the rejection is maintained.

The instant claims, as a whole, do not amount to significantly more than the abstract idea itself. This is because the claims

- (a) do not effect an improvement to another technology or technical field;
- (b) do not amount to an improvement to the functioning of a computer itself;
- (c) do not move beyond a general link of the use of an abstract idea to a particular technological environment.

The claims merely amount to the application or instructions to apply the abstract idea on a generic computer, and are considered to amount to nothing more than requiring a generic system built around a computer with user interfaces to merely carry out the abstract idea itself. As such, the claims, when considered as a whole, are nothing more than the instruction to implement the abstract idea in a particular, albeit well-understood, routine and conventional technological environment.

More specific:

Applicant submits "In view of the above, Applicant submits that the claims are patentable under step 2A prong I of the PEA." Examiner has carefully considered, but doesn't find Applicant's arguments persuasive. First, Applicant's remarks refer to the rejection from

8/28/2018, which precedes the issuing of the 2019 PEG (1/7/2019). As such, Applicant's remarks are moot.

Second, the eligibility analysis in the instant Office action, which fully complies with the 2019 PEG, concludes at Step 2A Prong One:

Claim 1, (which is repeated in Claim 11) is rejected under 35 U.S.C. 101 because the claim is directed to an abstract idea, a judicial exception, without reciting additional elements that integrate the judicial exception into a practical application. The claim recites defining publisher specifications, conducting an online auction, determining the successful bid, providing advertisements to the successful bid publisher. The limitations, as drafted, constitute a process that, under its broadest reasonable interpretation, covers commercial activity, but for the recitation of generic computer components ("in a processor in a computer"). That is, the drafted process is comparable to an advertising, business relationships (i.e. auction) process, i.e. a process aimed at providing advertisements to the successful bidder. If a claim limitation, under its broadest reasonable interpretation, covers performance of limitations of agreements in form of contracts, legal obligations, advertising, marketing, sales activities or behaviors, business relationships, but for the recitation of generic computer components, then it falls within the "Certain Methods of Organizing Human Activity – Commercial or Legal Interactions (e.g. agreements in form of contracts, legal obligations, advertising, marketing, sales activities or behaviors, business relationships)" grouping of abstract ideas. Accordingly, the claim recites an abstract idea.

Therefore, the independent claims are directed to an abstract idea.

Applicant submits "Thus, the present claims are consistent with all of the above-identified exemplary considerations under prong 2 of step 2A. Accordingly, under prong 2 of step 2A, the claims recite patentable subject matter." Examiner has carefully considered, but doesn't find Applicant's arguments persuasive. The eligibility analysis in the instant Office action, which fully complies with the 2019 PEG, concludes at Step 2A Prong Two:

This abstract idea is not integrated into a practical application. In particular, stripped of those claim elements that are directed to an abstract idea, the remaining positively recited elements of the independent claims are directed to inserting a pixel into advertisement, receiving the pixel, analyzing statistics, determining customer base. These claim elements amount to no more than insignificant extra-solution activity (MPEP 2106.05(g)). The non-positively recited claim elements are the publisher specification, the impressions, the one or more bids, the one or more publishers. While these descriptive elements may provide further

helpful context for the claimed invention, they do not serve to integrate the abstract idea into a practical application. The recited computer elements, i.e. a processor, a memory, are recited at a high-level of generality (i.e. as a generic computing device performing generic computer functions of obtaining data, interpreting the obtained data and providing results), such that they amount to no more than mere instructions to apply the exception using generic computer components.

Accordingly, these additional claim elements do not integrate the abstract idea into a practical application, because they do not impose any meaningful limits on practicing the abstract idea. Per Step 2A, the claim is directed to an abstract idea not integrated into a practical application.

Therefore, the identified abstract idea is not integrated into a practical application.

Applicant submits “Such an unconventional sequence of steps renders the claim eligible under step 2B.” Examiner has carefully considered, but doesn’t find Applicant’s arguments persuasive. The eligibility analysis in the instant Office action, which fully complies with the 2019 PEG, concludes at Step 2A Prong Two:

When the independent and dependent claims are considered as a whole, as a combination, the additional elements noted above appear to merely apply the abstract concept to a technical environment in a very general sense – i.e. a computer receives information from another computer, processes that information and then sends a response based on processing results. The most significant elements of the claims, that is the elements that really outline the inventive elements of the claims, are set forth in the elements identified in the independent claims as an abstract idea. The fact that the computing devices are facilitating the abstract concept is not enough to confer statutory subject matter eligibility. In sum, the additional elements do not serve to confer subject matter eligibility to the invention since their individual and combined significance is still not heavier than the abstract concepts at the core of the claimed invention. Therefore, it is concluded that the dependent claims of the instant application do not amount to significantly more either. (MPEP 2106.05)

Therefore, the additional claim elements of the independent claims and those of the dependent claims do not constitute significantly more.

It becomes self-evident that there are no meaningful limitations in the claims that transform the judicial exception into a patent eligible application such that the claims amount to

significantly more than the judicial exception itself. Therefore, the rejection under 35 U.S.C. § 101 is maintained.

With respect to Applicant's Remarks as to the claims being rejected under 35 USC § 103.

Applicant submits remarks and arguments geared toward the amendments. Examiner has carefully reviewed and considered Applicant's remarks, however they ARE MOOT in light of the fact that they are geared towards the amendments.

The other arguments presented by Applicant continually point back to the above arguments as being the basis for the arguments against the other 103 rejections, as the other arguments are presented only because those claims depend from the independent claims, and the main argument above is presented against the independent claims. Therefore, it is believed that all arguments put forth have been addressed by the points above.

Examiner has reviewed and considered all of Applicant's remarks. The changes of the grounds for rejection, if any, have been necessitated by Applicant's extensive amendments to the claims. Therefore, the rejection is maintained, necessitated by the extensive amendments and by the fact that the rejection of the claims under 35 USC § 101 has not been overcome.

Conclusion

Applicants' amendments necessitated the new ground(s) of rejection presented in this Office action. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this office action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this office action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Radu Andrei whose telephone number is 313.446.4948. The examiner

can normally be reached on Monday – Friday 8:30am – 5pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ilana Spar can be reached at (571)270-7537. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

As detailed in MPEP 502.03, communications via Internet e-mail are at the discretion of the applicant. Without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is a sample authorization form which may be used by applicant:

"Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (in U.S.A. or Canada) or 571-272-1000.

Any response to this action should be mailed to:
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to 571-273-8300

Hand delivered responses should be brought to the:

United States Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

/Radu Andrei/
Examiner, Art Unit 3682

