

## Examples: Abstract Ideas

### 2. E-Commerce Outsourcing System/Generating a Composite Web Page

*The following 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.*

#### Background

In affiliate commerce systems, website owners or hosts sell space on their web pages in the form of paid advertisements. Many of these advertisements are banner ads that include links to items offered for sale by third-party merchants. When a visitor activates (clicks on) a link, the visitor is instantly transported away from the host's web page to the merchant's web page so that she can purchase the item (a "commerce object", e.g., a product or service) associated with the link. The merchant pays a commission on each such sale to the host of the web page displaying the link. While these advertising links function as a commission-based advertising program that provides the host additional revenues, they have the disadvantage of luring visitor traffic away from the host's web page, which results in the host losing control of potential customers.

The inventor has addressed this problem of retaining control over customers during affiliate purchase transactions, by creating a system for co-marketing the "look and feel" of the host web page with the product-related content information of the advertising merchant's web page. The system can be operated by a third-party outsource provider, who acts as a broker between multiple hosts and merchants. Prior to implementation, a host places links to a merchant's web page on the host's web page. The links are associated with product-related content on the merchant's web page. Additionally, the outsource provider system stores the "look and feel" information from each host's web pages in a computer data store, which is coupled to a computer server. The "look and feel" information includes visually perceptible elements such as logos, colors, page layout, navigation system, frames, mouse-over effects or other elements that are consistent through some or all of each host's respective web pages.

In the inventor's system, a customer who clicks on an advertising link is not transported from the host web page to the merchant's web page, but instead is re-directed to a composite web page that combines product information associated with the selected item and visually perceptible elements of the host web page. The outsource provider's server responds by first identifying the host web page where the link has been selected and retrieving the corresponding stored "look and feel" information. The server constructs a composite web page using the retrieved "look and feel" information of the host web page, with the product-related content embedded within it, so that the composite web page is visually perceived by the customer as associated with the host web page. The server then transmits and presents this composite web page to the customer so that she effectively remains on the host web page to purchase the item without being redirected to the third party merchant affiliate. Because such composite pages are visually perceived by the customer as associated with the host web page, they give the customer the impression that she is viewing pages served by the host. Further, the customer is able to purchase the item without being redirected to the third party merchant affiliate, thus allowing the host to retain control over the customer. This system enables the host to receive the same advertising revenue streams as before but without the loss of visitor traffic and potential customers.

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### Representative Claim

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.

### Analysis

#### Claim 19: Eligible.

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*).

Next, the claim is analyzed to determine whether it is directed to a judicial exception. 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. 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. The claimed

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

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. An excerpt of the court’s discussion follows:

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. [ ]

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 “outsourcing 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 outsourcing 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.

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*).