

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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THE JEWELRY CHANNEL, INC. USA d/b/a Liquidation Channel,  
Petitioner,

v.

AMERICA'S COLLECTIBLES NETWORK, INC.,  
Patent Owner.

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Case CBM2014-00119  
Patent 8,370,211 B2

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Before LINDA M. GAUDETTE, BRIAN J. McNAMARA, and  
DAVID C. McKONE, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

FINAL WRITTEN DECISION

*35 U.S.C. § 328(a) and*  
*37 C.F.R. § 42.73*

## BACKGROUND

On October 20, 2014, we entered a Decision to Institute a covered business method patent review of U.S. Patent 8,370,211 B2 (“the ’211 Patent”) on the grounds that claims 1–39 of the ’211 Patent do not recite patentable subject matter under 35 U.S.C. § 101. Paper 10 (“Dec. to Inst.”). Patent Owner has also filed a contingent Motion to Amend. Paper 22 (“Mot. to Amend”). In this final written decision, we conclude that claims 1–39 are unpatentable under 35 U.S.C. § 101. We also conclude that the claims proposed in the Motion to Amend are unpatentable under 35 U.S.C. § 101 and deny the Motion to Amend.

### THE ’211 PATENT (EXHIBIT 1001)

Although entitled “Computer System,” the ’211 Patent is drawn to a method of conducting a telephone- or Internet-based (“Web”) reverse auction, where the reverse auction is transmitted to users on a medium.<sup>1</sup> Ex. 1001, Abstract. The ’211 Patent states that the objective of the invention is to mitigate problems with existing reverse auction systems, including the length of time it takes a party to complete the registration procedure, limitations resulting from using dedicated telephone numbers to distinguish between offered products, potential overselling and underselling of products, and the associated need to monitor each call throughout its duration to avoid targeting a purchasing customer with offers for unsold products. Ex. 1001, col. 1, l. 51–col. 2, l. 21.

The ’211 Patent discloses a computer-based system using a call center or a website, with a processor and databases, e.g., a call database, a customer

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<sup>1</sup> Claims 1–34 and 36–39 recite a method; claim 35 recites a corresponding apparatus, i.e., a computer system for conducting a reverse auction of units.

database, an order database, and a game database, as well as a telephone lookup system, a broadcast graphics computer, and a delivery system. *Id.* at col. 6, ll. 16–40. The game database maintains historical records. *Id.* at col. 8, ll. 54–56. The reverse auction, or game, is conducted by a TV producer, which may be a person or may be an automated computer. *Id.* at col. 8, ll. 15–27, 39–41. After accessing a product database, the producer enters a quantity of units for a selected product and begins the reverse auction. *Id.* at col. 8, ll. 51–56.

A monitoring process provides the human or automated TV producer “preliminary indicators” concerning the likelihood of a sale of a unit and eventual finalized allocation to a user. *Id.* col. 10, ll. 10–16. The ’211 Patent identifies the following preliminary indicators: the number of calls received, the number of callers indicating they wish to place an order (e.g., indicated by pressing ‘1’ on the telephone), the number of calls that have been answered, and the calls that have completed the purchase confirmation process. *Id.* at col. 10, ll. 10–15. Using the preliminary indicators, the human or automated producer can determine whether to reduce the unit price, e.g., when the number of units sold is fewer than desired, or reduce the quantity of available units. *Id.* at col. 10, ll. 16–45. Using the preliminary indicators and historical information about the product or caller, the producer need not wait for sales confirmation to take action, thereby reducing the number of callers in the queue with little chance of winning a unit purchase and improving the efficiency of the auction by reducing the amount of time spent on a product for which no more units are available. *Id.* at col. 10, ll. 46–57. The producer can apply any or all of these preliminary indicators based on personal experience, personal instinct,

stored records, or using automatic algorithms based on past games in the games database. *Id.* at col. 10, l. 58–col. 11, l. 18. In the case of a Web auction, the producer makes use of a site’s “shopping cart” feature as a preliminary indicator and the check-out process. *Id.* at col. 11, l. 54–col. 12, l. 11.

#### ILLUSTRATIVE CLAIM

1. A method of conducting a telephone based reverse auction for selling units where the reverse auction is transmitted to users on a medium by a system, the method comprising the steps of:  
providing a number of units for sale and storing a preliminary available quantity in an allocation database initially indicative of the number provided for sale;  
providing a telephone number to which calls from callers can be placed to enter the reverse auction;  
recording the time at which one or more calls were received on the telephone number in a call record in a call database;  
placing each caller into a queue and assigning them to a call operator or the system in order to sell a unit;  
conducting a reverse auction in which the system reduces the indicated price of a unit over time and reduces the preliminary available quantity, wherein the preliminary available quantity is reduced based at least partly on one or more preliminary indicators associated with the caller, and wherein the reducing of the preliminary available quantity occurs before a sale of a unit is completed;  
concluding the reverse auction at a time the preliminary available quantity is reduced to a pre-determined number; and  
storing in an auction database the price at the conclusion of the auction.

## CLAIM CONSTRUCTION

Petitioner contends that, under the broadest reasonable interpretation standard, the claim terms should be given their ordinary meaning and that no terms need be construed. Pet. 23–25. Patent Owner agrees that for purposes of this proceeding, there are no terms in the claims of the '211 Patent that require construction. Thus, we apply the ordinary meaning to the terms used in the claims.

## § 101 SUBJECT MATTER ELIGIBILITY

The only issue before us in this proceeding is Petitioner's assertion that the claims of the '211 Patent recite subject matter that is not patentable under 35 U.S.C. § 101. Patent Owner argues that the statute does not permit patentable subject matter challenges in covered business method patent review. PO Resp. 62–69. The Federal Circuit resolved this issue in *Versata Development Group, Inc. v. SAP America, Inc.*, 793 F. 3d 1306,1330 (Fed. Cir. 2015), stating “[w]e agree with the USPTO and . . . we so hold that, looking at the entirety of the statutory framework and considering the basic purpose of CBM reviews, the PTAB acted within the scope of its authority delineated by Congress in permitting a § 101 challenge under AIA § 18.”

To determine whether a patent claims ineligible subject matter, we engage in a two-step process: first, we determine whether the claims at issue are directed to a patent ineligible concept, i.e., laws of nature, natural phenomena, or abstract ideas; at step two, we examine the elements of the claim to determine whether it contains an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application. *Alice Corp. v. CLS Bank Int'l.*, 134 S. Ct. 2347, 2355–56 (2014).

Petitioner contends that the patent ineligible abstract idea claimed in the '211 Patent is “reducing a price and reducing a quantity in a reverse auction, based on preliminary indicators.” Pet. 28. Patent Owner argues that “[t]he underlying idea of the '211 Patent is that of a reverse auction,” PO Resp. 21, 38–40, and that the “primary inventive concept of the '211 Patent is the use of preliminary indicators to reduce a preliminary available quantity of products before a sale of a unit is completed,” *id.* at 23. Thus, Patent Owner argues that the use of preliminary indicators to reduce the quantity of product available before a sale of a unit is completed is not part of the abstract idea, but instead represents an inventive concept that adds significantly more to the underlying abstract idea of a reverse auction, thereby transforming the claimed abstract idea into a patent eligible application. *Id.* at 44–51.

In support of its argument, Patent Owner cites the testimony of Dr. David C. Wyld (Ex. 2012 “Wyld Decl. 2”) stating that the additional features disclosed and claimed in the '211 Patent, such as the identification and use of preliminary indicators in any manner, and particularly to reduce an available quantity before the sale of an item is completed, are not part of the underlying idea. *Id.* at 40–41, 45–46 (citing Wyld Decl. 2 ¶¶ 43–47). Patent Owner also cites the deposition testimony of Petitioner’s witness, Andrew Glasspool, arguing that nowhere does Mr. Glasspool add the additional element of “using preliminary indicators” to define the abstract idea of the '211 Patent. *Id.* at 42–45.

Petitioner responds that the claimed inventive use of preliminary indicators is itself an abstract idea. Pet. Reply 12. Although not conceding that the claimed use of preliminary indicators is inventive, Petitioner argues

that even the addition of novel or non-routine components to the claimed idea does not necessarily turn an abstraction into something concrete. Pet. Reply 12 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *Dell Inc. v. Disposition Servs. LLC*, Case No. CBM2013-00040, slip op. at 12 (PTAB Jan. 9, 2015) (Paper 15) (“Even assuming that the methods and systems are not taught in the prior art, that is not dispositive because even a novel and nonobvious claim directed to a purely abstract idea is patent ineligible.”)). At the trial hearing, Petitioner argued that whether the claims are considered to constitute a single abstract idea, or a combination of two abstract ideas, i.e., a reverse auction and the use of preliminary indicators to reduce available quantity, they do not recite patent eligible subject matter. Tr. 54–55, 62.

Independent method claim 1 is drawn to a telephone-based reverse auction. Independent system claim 35 is drawn to a computer system for conducting a reverse auction. Independent method claim 36 is drawn to selling units on television by a system using a reverse auction. Independent method claim 39 is drawn to an Internet-based reverse auction. The auction is conducted by a producer. Ex. 1001, col. 8, ll. 23–26. The producer can be a person, who makes adjustments based on the producer’s recollection of the caller’s history, or automatic algorithms may be employed. *Id.* at col. 8, ll. 24–26, col. 11, ll. 4–18. All of the independent claims recite the use of preliminary indicators, but are not limited to specific preliminary indicators. The preliminary indicators identified in the specification include the number of calls received by the auction, indications of the willingness of a customer calling in to the auction to place an order, e.g. by pressing “1,” and the presence of a customer’s information, e.g., credit card information, in a

database of corresponding telephone numbers. *Id.* at col. 9, ll. 13–col. 10, l. 22. In practice, pressing “1” is the most commonly used preliminary indicator that the customer is willing to pay the price being offered at that point in the auction, causing the producer to reduce the available quantity by the number of units the customer is willing to purchase at that price. *Id.* at col. 10, ll. 65–67.

The transaction with the customer is not completed at that point, however, because the producer may lower the price further based on the preliminary indicators, e.g., an insufficient number of calls or products sold, to encourage other customers to make a purchase. *Id.* at col. 10, ll. 15–26, 38–40, 65–67; Tr. 45–48. Thus, completion of the transaction is deferred until a predetermined number of remaining units is reached, e.g., there are no units left, or the producer is unwilling to reduce the price further to entice more buyers to purchase the remaining units. *Id.* at col. 11, ll. 32–43. When a final price is reached and stored, the customer transactions are completed. *Id.* at col. 11, ll. 38–42; Tr. 47–48. The producer is prevented from reducing the quantity below the start quantity less total calls received less orders in the game on the website. Ex. 1001, col. 11, ll. 24–28. Thus, during the reverse auction, the producer, whether a human or a machine, tests customer response to various price offers and adjusts the price accordingly, in order to sell the available units of product.

In *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015)<sup>2</sup>, claims drawn to testing a plurality of prices, gathering statistics generated about how customers reacted to the offers testing the price, using the data to map the demand curve for a given product, and automatically selecting and offering new prices based on the estimated outcome, were found to recite ineligible subject matter. *Id.* The court noted that the concept of “offer based pricing” is similar to other fundamental economic concepts found to be abstract ideas by the Supreme Court. *OIP Techs.*, 788 F.3d at 1362. Patent Owner argues that in *OIP* the Federal Circuit found the claims unpatentable, because the claim limitations did not provide a meaningful limitation on the abstract idea. Paper 39 (“PO Suppl. Brief”) 1–2. Patent Owner argues that in the ’211 Patent, the limitations of: 1) using preliminary indicators; 2) reducing the preliminary available quantity based at least partly on one or more preliminary indicators; and 3) reducing the preliminary available quantity before a sale of a unit is completed are all meaningful limitations that add “significantly more” to the abstract idea of a reverse auction. *Id.* We disagree.

In the ’211 Patent, the producer tests a plurality of prices throughout the auction. Preliminary indicators, e.g., the number of customers who press “1” to place an order at a particular price, provide statistics about how customers reacted to the offers at various test prices. In the ’211 Patent, the producer adjusts the demand curve by reducing the quantity available based

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<sup>2</sup> *OIP* was decided on June 15, 2015, shortly after Patent Owner filed its Reply to Petitioner’s Opposition to the Motion to Amend (Paper 28, “Opp. to Mot. to Amend”), and a month before the oral hearing in this proceeding. At our request, the parties filed post-hearing briefs on October 1, 2015, to address the implications of *OIP*. Paper 37 (“Petitioner’s Suppl. Brief”) and Paper 39 (“PO Suppl. Brief”).

on customers' reactions to the various price offers, and selects new prices based on the estimated outcome, i.e., expectations that additional customers will purchase units as the price is lowered. The '211 Patent claims recite that these steps occur before the actual sale of an item being auctioned.

Further evidence that the '211 Patent adjusts the demand curve is provided by Patent Owner's witness Dr. Wyld, who states that in an MSIRA system, such as that in the '211 Patent, the critical task of managing aggregate demand involves determining the true interest of potential buyers completing purchases at the clearing price and allowing enough items to remain for sale to all winning bidders. PO Resp. 13–14 (citing Wyld Decl. 2 ¶¶ 34, 40, 41). Thus, a preliminary indicator, such a customer pressing “1,” provides statistics that inform the auction producer about how to adjust the offering price presented to potential customers. In *OIP* the court discussed “the claims’ recitation of ‘present[ing] [offers] to potential customers’ and ‘gathering . . . statistics generated during said testing about how the potential customers responded to the offers,’” concluding that “[t]hese processes are well-understood, routine, conventional data-gathering activities that do not make the claims patent eligible. . . . [T]he addition of steps to test prices and collect data based on customer reactions does not add any meaningful limitations to the abstract idea.” *OIP Techs.*, 788 F.3d at 1363–64 (citations omitted). The claims of the '211 Patent recite a patent ineligible abstract idea, similar to the offer-based pricing claims the Federal Circuit found ineligible in *OIP*.

In *OIP*, the court further noted that, beyond the abstract idea of offer-based pricing, the claims merely recited well-understood, routine, conventional activities either by requiring computer activities or routine data

gathering steps, stating “[a]t best, the claims describe the automation of the fundamental economic concept of offer-based price optimization through the use of generic-computer functions.” *Id.* Thus, considered individually or as an ordered combination, the claim elements in *OIP* did not transform the claimed abstract idea into a patent eligible process. *Id.* Similarly, in the ’211 Patent, the remaining claim elements involve a conventional system interface, e.g., providing a website or a call-in telephone number and placing callers into a queue, routine data gathering, e.g., recording the time an inquiry enters the queue and storing the preliminary quantity of units in a database, and routine calculations, e.g., subtracting from the stored preliminary quantity of available units based on the number of customers who indicate they are prepared to make a purchase.

“To impart patent-eligibility to an otherwise unpatentable process under the theory that the process is linked to a machine, the use of the machine ‘must impose meaningful limits on the claim’s scope.’”

*Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed Cir. 2011) (quoting *in re Bilski*, 545 F.3d 943, 961 (Fed. Cir. 2008)). As discussed above, the remaining limitations of the independent claims of the ’211 Patent recite data gathering or other elements that do not impose such meaningful limits on the claims’ scope.

*OIP* also demonstrates that the claimed “inventive concept” argued by Patent Owner is simply the application of the well-known offer-based pricing principles. Thus, even applying Patent Owner’s separate concept analysis, the claims do not recite an inventive concept that would transform a reverse auction into patent eligible subject matter. Therefore, applying either Petitioner’s or Patent Owner’s approach to identifying the claimed

abstract concept and inventive subject matter, we reach the same conclusion, i.e., that the claimed subject matter is ineligible under 35 U.S.C. § 101.

Petitioner also argues that the claims recite ineligible subject matter because the '211 Patent Specification states that the producer conducting the auction can carry out the purported inventive concept mentally and notes that Patent Owner's witness, Dr. Wyld, in his deposition testimony acknowledges the inventive concept can be carried in a person's mind. Pet. 13–17, 23–31; Pet. Reply 6–11 (citing Ex. 1001, col. 8, ll. 24–36, 39–41; col. 10, 16–20, ll. 38–45; col. 11, ll. 10–17; Ex. 1008, 149, 151–53, 198, 200–01, 244–47). In response to questioning by Patent Owner's counsel, Dr. Wyld testified that all of the claims of the '211 Patent require a system, as opposed to a human, to carry out at least some of the steps, and that the steps of claim 1 cannot be performed entirely within the human mind or using pen and paper. Ex. 1008, 198, 245–46. However, the '211 Patent Specification makes clear that “[t]he TV producer 24 can either automatically [make] use of these preliminary indicators of sale (or in the case of a confirmed purchase confirmed indicator of sale), or a human TV producer 24 can do so manually.” Ex. 1001, col. 10, ll. 16–20. *See Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d at 1370, 1373 (“In finding that the process in *Benson* was not patent-eligible the Supreme Court appeared to endorse the view that methods which can be performed mentally, or which are the equivalent of human mental work, are unpatentable abstract ideas – the basic tools of scientific and technological work that are open to all.”) (holding that “a method for verifying the validity of a credit card transaction over the Internet” was directed to an abstract idea or unpatentable mental process).

Petitioner cites *Cyberfone Systems LLC v. CNN Interactive Group, Inc.*, 2014 WL 718153 at \*2 (Fed. Cir. Feb. 26, 2014) (nonprecedential) for the proposition that human mental work and well-established fundamental ideas have been found to abstract concepts, not eligible for patent protection. Pet. 26, 37 Patent Owner, in response, notes that all *Cyberfone* says is that if a method can be performed by the human mind alone, the method is not patentable. PO Resp. 56 (citing *Cyberfone*, 2014 U.S. App. LEXIS 3599, at \*7). Patent Owner contends that none of the 39 claims in the '211 Patent can be performed by the human mind alone. *Id.* In context, *Cyberfone* reads:

Although methods that can be performed in the human mind alone are not eligible for patent protection, *Cybersource*, 654 F.3d at 1373, the category of patent-ineligible abstract ideas is not limited to methods that can be performed in the human mind. *See Bilski*, 130 S. Ct. at 3230 (“[T]he prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ . . . .” (quoting *Diamond v. Diehr*, 450 U.S. 175, 191–92 (1981))).

*Cyberfone* at \*8. Thus, *Cyberfone* makes clear that methods that cannot be performed in the human mind alone nevertheless may be ineligible for patent protection. In *Cyberfone* the court found that, like the telephone in the claims of the '211 Patent, “the ‘telephone’ recited in claim 1 is not a specific machine, and adds nothing of significance to the claimed abstract idea.”

*Cyberfone* at \*9. Patent Owner’s position is that the inventive concept in the '211 Patent is the use of preliminary indicators to reduce the quantity of products available before completing a sale. PO Resp. 23. As discussed above, the '211 Patent discloses that a human producer can perform this process mentally and the remaining claim elements do not provide

meaningful limitations on the scope of the claim. Thus, regardless of whether a human producer can carry out the method in his mind alone or requires ancillary equipment to carry out the method, claims 1–39 of the '211 Patent do not recite patent-eligible subject matter.

Patent Owner argues that if the patent claim does not preempt in all fields where the underlying idea would be used, the claims should be patent eligible. PO. Resp. 35 (citing *Alice*, 134 S. Ct. at 2354 (quoting *Bilski v. Kappos*, 561 U.S. 593, 561 (2010))). Patent Owner contends that the claims do not preempt all methods and systems for conducting a reverse auction, but relate only to a “single practical application,” i.e., the MSIRA type of auction, “conducted using very specific things in a very specific way, namely preliminary indicators used to reduce a preliminary available quantity and reducing that quantity before a sale of a unit is completed.” PO Resp. 61. The claims of the '211 Patent preempt an MSIRA auctioneer from removing a product from the available product pool when a prospective buyer meets criteria that give the producer confidence the customer will complete a purchase. Patent Owner argues that this approach is an improvement over conventional MSIRA auctions in which the seller waits to complete the sale of each item before offering another item for sale. *Id.* at 14–15.

As discussed above, in *OIP* the Federal Circuit determined that claims drawn to automated, offer-based pricing do not recite patentable subject matter. In *Bilski*, the Court found unpatentable subject matter in claims that “attempt to patent the abstract idea of hedging risk in the energy market and then instruct the use of well-known random analysis to help establish some of the inputs into the equation.” *Bilski*, 561 U.S. at 612. In the context of

an automated reverse auction of more than one unit of a product, claims drawn to removing a unit from those available for purchase after the seller becomes confident the customer will buy that unit at the offered price, or a more favorable price, are drawn to an abstract idea that preempts setting aside product units for customers as the auction progresses. In addition, as Petitioner notes, in the case of an abstract idea, the absence of preemption does not necessitate a finding of patentable subject matter. Pet. 14 (citing *Bank of Am., N.A. v. Intellectual Ventures I LLC*, Case No. CBM2014-00028, slip op. at 20 (PTAB May 18, 2015) (Paper 52)).

Petitioner argues claims 2–34, which depend directly or indirectly from claim 1 and claims 37 and 38, which depend from claim 36, do not recite meaningful limitations that would provide patent-eligible subject matter under 35 U.S.C. § 101. Pet. 37–41, 43–44. Patent Owner does not direct its arguments to the dependent claims. We conclude that Petitioner has demonstrated that dependent claims 2–34, 37, and 38 also do not recite patent-eligible subject matter for the reasons discussed above.

In consideration of the above, we conclude that Petitioner has demonstrated by a preponderance of the evidence that claims 1–39 of the '211 Patent do not recite subject matter that is patent eligible under 35 U.S.C. § 101.

### MOTION TO AMEND

In its Motion to Amend, Patent Owner proposes claims 40–42, which “require the use of a system/computer system, an allocation database, a call database, an auction database, a call receiver, call monitoring component, an electronic call record, and an automated message.” Mot. to Amend 12–13. According to Patent Owner, a human cannot perform method steps like those of proposed claims 40–42 that require the use of such components. *Id.* at 13. Patent Owner repeats its arguments from the Patent Owner Response, that the underlying idea of the ’211 Patent is a reverse auction and that, even if this underlying idea is considered to be an abstract idea under *Alice*, the inventive concept, i.e., the use of preliminary indicators to reduce the preliminary available quantity based before the sale of a unit is completed, transforms the idea into a patent-eligible invention. *Id.* Patent Owner cites the testimony of Dr. Wyld in support of this position and notes that the ’211 Patent covers only a single practical application of a reverse auction. *Id.*

In opposing the Motion to Amend, Petitioner notes that Patent Owner already has asserted that original claims 36–38 require the use of a system. Opp. to Mot. to Amend 11. Petitioner also contends that Patent Owner has not argued that the newly added elements provide “significantly more” to the abstract idea of the ’211 Patent, but only that they are required in carrying out the claimed method. *Id.* Thus, according to Petitioner, Patent Owner’s proposed amendments do not address the § 101 problem of the original claims. *Id.*

We addressed Patent Owner’s contentions concerning the abstract ideas and purported inventive subject matter in our discussion of claims 1–39. Additional elements such as a computer and ancillary conventional

apparatus such as various databases storing information accessed by the computer, a call monitoring component that places a call into a queue and assigns the call to operator, an electronic call record that records the time the call was made, and an automated message, do not impose meaningful limits on the abstract idea of reducing the available quantity and the price during the auction based on the indicators that provide the auction producer confidence the customer will complete a purchase at that price (or a more favorable price) at the close of the auction. “In order for the addition of a machine to impose a meaningful limit on the scope of a claim, it must play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly, i.e., through the utilization of a computer for performing calculations.” *SiRF Techs., Inc. v. Int’l Trade Comm.*, 601 F.3d 1319, 1333 (Fed. Cir. 2010) (determining that a GPS receiver was a meaningful limit on the scope of the claims because, without the recited GPS receiver, it would be impossible to generate pseudo ranges that estimate the distance from a GPS receiver to a plurality of GPS satellites). In contrast, the limitations in the proposed amended claims recite elements of a general purpose computer that facilitate conducting a reverse auction more efficiently. Even limited to the context of an MSIRA, these added features do not limit the scope of the claim in a meaningful way because the reservation of units does not require a specific machine.

Patent Owner repeats its arguments that the inventive concept test is met by the novel use of well-known customer characteristics and/or actions, employed in this narrow setting, as preliminary indicators of purchase

intention. Mot. to Amend 14. We also addressed this argument in our discussion of Federal Circuit precedent in *OIP* in the context of claims 1–39.

Finally, Patent Owner contends that no monopoly over the use of a reverse auction is granted by the '211 Patent, because there are a multitude of activities and ways of conducting a reverse auction that remain free for all to use. *Id.* at 15. However, as discussed above, the claims proposed in the Motion to Amend recite additional elements that do not change the abstract nature of the claimed subject matter, i.e., setting aside units from a pool of available units when the auction producer expects the buyer will complete a sale transaction.

In consideration of the above, we conclude that the proposed claims 40–42 do not recite patent-eligible subject matter and the motion to amend is denied.

#### SUMMARY

In consideration of the above, we conclude that claims 1–39 recite subject matter that is not patent eligible under 35 U.S.C. § 101. We also conclude that the claims proposed in Patent Owner's Motion to Amend recite subject matter that is not patent eligible under 35 U.S.C. § 101 and, therefore, we deny the Motion to Amend.

#### ORDER

In consideration of the foregoing, it is hereby:  
ORDERED that claims 1–39 are unpatentable;  
FURTHER ORDERED that Patent Owner's Motion to Amend is  
DENIED; and

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FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of it must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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