# UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LUCAS J. MYSLINSKI
_____

Appeal 2015-008144
Application 14/260,492
Technology Center 3600
_____

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's
final decision rejecting claims 1–11 and 14–22. We have jurisdiction over
the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

# BACKGROUND

Appellant's invention is directed to automatically verifying the factual accuracy of information.  Spec. 1.

Claim 1 is illustrative:

1.  A method programmed in a non-transitory memory of a device comprising:

    a.  automatically analyzing social networking information of a user including:

        i. capturing the social networking information from a social networking system; and

        ii. parsing the social networking information into parsed segments based on punctuation within and at an end of sentences within the social networking information;

    b.  automatically fact checking, using the device, the social networking information to determine a factual accuracy of the social networking information by comparing the parsed segments of the social networking information with source information, wherein the source information comprises only approved social networking information, wherein the approved social networking information includes user-approved social networking information approved by the user and contact-approved social networking information approved by contacts of the user, wherein the approved social networking information approved by the user or the contacts of the user comprises visited social networking information visited by the user or the contacts of the user but not disapproved by the user or the contacts of the user, wherein the contacts of the user are the contacts of the user in the social networking system, wherein fact checking includes determining a text string of the social networking information is in the source information, wherein the source information containing the text string of the social networking information is an agreeing source, further wherein fact checking includes determining a number of agreeing highest weighted sources and multiplying the number of agreeing highest weighted

sources by a highest weight value, determining the number of agreeing second highest weighted sources and multiplying the number of agreeing second highest weighted sources by a second highest weight value, and continuing through determining the number of agreeing lowest weighted sources and multiplying the number of agreeing lowest weighted sources by a lowest weight value and combining the multiplying results to determine a total value, and upon determining the total value is above a fact check threshold, the automatic fact checking result is true, and upon determining the total value is not above the fact check threshold, the automatic fact checking result is false; and

    c.  automatically presenting a status of the social networking information in real-time based on the automatic fact checking result from the comparison of the social networking information with the source information.

The Examiner relies on the following prior art reference as evidence of unpatentability:

| | | |
|---|---|---|
| Terheggen | US 2013/0218788 A1 | August 22, 2013 |
| Rose | US 2013/0091436 A1 | April 11, 2013 |
| Myslinski | US 8,185,448 B1 | May 22, 2012 |

Appellant appeals the following rejections:

Claims 1–11 and 14–22 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 3, 4, 6, 9, 10, 15, 16 and 18 under 35 U.S.C. § 103(a) as unpatentable over Myslinski and Terheggen;

Claims 2, 11, and 19–22 under 35 U.S.C. § 103(a) as being unpatentable over Myslinksi, Terheggen, and Rose;

Claims 14 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Myslinksi, Terheggen, and Official Notice;

ANALYSIS

*Rejection under 35 U.S.C. § 101*

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is "directed to" a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk."); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk."); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) ("Analyzing respondents' claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter."); *Parker v. Flook*, 437 U.S. 584, 594–595 (1978) ("Respondent's application simply provides a new and presumably better

method for calculating alarm limit values."); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) ("They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.").

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Flook*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Gottschalk*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber, *Diamond*, 450 U.S. at 184 n.7, "'tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,'" *Gottschalk*, 409 U.S. at 69 (quoting *Corning v. Burden*, 56 U.S. 252, 267 (1853)), and a process for manufacturing flour, *id.* (citing *Cochrane v. Deener*, 94 U.S. 780 (1876)).

If the claim is "directed to" a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This is a search for an "inventive concept"—an element or combination of elements sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.*

The Examiner held that claim 1 is directed to the abstract idea of fact checking information against a source, which is a method of organizing human activities, an idea of itself, or a mathematical relationship or formula. Supplemental Final Act. 2–3 (hereinafter "Final Act."). More specifically, the Examiner determined that the claims were directed to an abstract idea for two reasons. Ans. 11. The first reason is that the claims are directed to a

method of organizing human activity. *Id.* The activity organized is the organizing and comparing of information to determine truthfulness. *Id.* The second reason is that the claims are directed to a set of instructions that utilize an algorithm that is used to calculate a fact checking score. *Id.* The Examiner found that the additional elements or combination of elements in the claim other than the abstract idea per se amount to no more than mere instructions to implement the idea on a computer using generic computer structure. Final Act. 3.

We agree with the Examiner that claim 1 is directed to checking information against a source and manipulating the data using a mathematical formula, which is an abstract idea. We additionally note that claims involving data collection, analysis, and display have been found to be an abstract idea. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that "collecting information, analyzing it, and displaying certain results of the collection and analysis" are "a familiar class of claims 'directed to' a patent ineligible concept"); *see also In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, like the claims found abstract in prior cases, uses generic computer technology to perform data collection, analysis, and unlike the claims found non-abstract in prior cases, does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they "focused on a specific asserted improvement in computer animation"). As such, claim 1 is directed to the abstract idea of receiving, analyzing, and displaying data.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claims do not tie up or preempt the entire concept of checking information against a source. While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), cert. denied, 136 S. Ct. 701, 193 (2015) ("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract."). And, "[w]here a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot." *Ariosa*, 788 F.3d at 1379.

In regard to Appellant's argument that streamlines eligibility analysis should be applied to the present claims Appellant mischaracterizes the purpose of section 1(B)(3) of the *2014 Interim Guidance on Patent Subject Matter Eligibility* guidelines as placing a requirement on the Examiner ("section 1(B)(3) requires" (App. Br. 17)). Rather, section 1(B)(3) is available to the Examiner as a discretionary streamlined § 101 *Alice/Mayo* analysis favoring Applicant. Section 1(B)(3) is explicit that "if there is doubt as to whether the applicant is effectively seeking coverage for a judicial exception itself, ***the full analysis should be conducted."*** Emphasis added. Contrary to Appellant's argument, the **streamlined** patent-**eligibility** analysis under section 1(B)(3) is not required to be available to Appellants; rather, it is at the Examiner's discretion. The Examiner choosing to perform a full § 101 *Alice/Mayo* analysis is not an error.

We also find unpersuasive of error on the part of the Examiner
Appellant's arguments that the claims cover more than organizing human
+activity (*see* Reply Br. 10), and more than a generic theorem or proof (*see*
App. Br. 9–10). The Examiner recognized that the claims are not directed to
solely a generic theorem or proof, because in addition to finding that the
claims are directed to an algorithm, the Examiner also determined that the
claims were also directed to a method of organizing human activities. As
such, the Examiner determined that the claims were directed to two abstract
ideas. We note that merely combining abstract ideas does not render the
combination any less abstract. *See Elec. Power Grp. v. Alstom S.A.*, 830
F.3d 1354 (claims focused on a combination of abstract-idea processes are
directed to an abstract idea).

We are not persuaded of error on the part of the Examiner by
Appellant's argument that claims 2–10 include additional limitations that
further narrow the claimed subject matter, because these additional
limitations are also directed to managing human activity and an algorithm.
For example, claim 2 recites that the method of claim 1 includes additional
steps of determining fact checking scores and comparing those scores with a
threshold and/or each other. These additional steps are also related to
managing human activity and an algorithm.

Turning to the second part of the *Alice* analysis, we do not agree with
the Appellant that the subject matter of the claims is rooted in computer
technology in order to overcome a problem specifically arising in the realm
of computer networks and is analogous to that in *DDR Holdings, LLC v.
Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). App. Br. 20.

In *DDR*, the Court noted that a claim may amount to more than any abstract idea recited in the claims when it addresses a business challenge, such as "retaining website visitors," where that challenge is particular to a specific technological environment, such as the Internet. In *DDR*, the court stated that "the [ ] 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." *DDR Holdings*, 773 F.3d at 1257. This was done in the claim by serving a composite page with content based on the link that was activated to serve the page.

In contrast, claim 1 performs a process that checks information for accuracy. This problem is not rooted in computer technology. Problems associated with disseminating inaccurate information through a medium (social network) is not a technical problem. Human beings have been checking the accuracy of information that is disseminated for many years. That the process of checking the accuracy of information can be assisted by the use of a computer, and that the information is transmitted through a social network, is not pertinent to determining whether the claim itself provides a technical solution to a technical problem. In this regard, the invention does not improve the technical workings of the computer or the Internet used to transmit the information.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the allowance of certain claims under 35 U.S.C. § 103 is evidence that the claims are not directed to insignificant limitations.

To the extent Appellant maintains that the limitations necessarily amount to "significantly more" than an abstract idea because the claimed subject matter is allegedly patentable over the prior art, Appellant misapprehends the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an "inventive concept," the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for "'an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice*, 134 S. Ct. at 2355. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

We agree with the Examiner's response to the remaining arguments found on pages 11–14 of the Answer and adopt same as our own.

In view of the foregoing, we will sustain this rejection.

*Rejections under 35 U.S.C. § 103(a)*

We will not sustain these rejections because we agree with the Appellant that the Examiner has not established that the prior art discloses comparing parsed segments of social networking information with source information, wherein the social networking information comprises user-approved source networking information and contact-approved source networking information, as recited in claim 1 (limitation (b)), and similarly recited in claims 19 (limitations (c) and (e)) and 20 (limitation (b)(ii)). The Examiner relies on Myslinski at column 9, lines 25–30 for teaching this subject matter. Final Act. 4, 9; *see also* Ans. 4, 8. We find that this portion of Myslinski discloses that an example of implementation of fact checking

includes searching, parsing the results or searching through the results of a search, and comparing the results with source information to retrieve results based on the comparison.  There is no disclosure in this portion of Myslinski that the source information is user-approved source information or contact approved source networking information.

In view of the foregoing, we will not sustain the rejections of independent claims 1, 19, 20 and their dependent claims under 35 U.S.C. § 103(a).

## DECISION

We affirm the Examiner's § 101 rejection.

We do not affirm the Examiner's § 103 rejections.

## TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).  *See* 37 C.F.R. § 1.136(a)(1) (2009).

## ORDER

### AFFIRMED