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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIK FRANCIS VANBRAGT, WILLIAM HENRY KELLY
MOONEY, MATTHEW ADAM OCKO, CARL ERIC SCHIERMEYER,
JONATHAN CHANG TIEN, and ROGER F. DICKEY

Appeal 2016-000271
Application 13/244,774
Technology Center 3700

Before CHARLES N. GREENHUT, ANNETTE R. REIMERS, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Erik Francis Vanbragt et al. (Appellants) appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 1, 2, 4, and 6–20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter¹ and under 35 U.S.C. § 103(a): (1) claims 1, 2, 4, and 6–19 as unpatentable over Low (US 8,012,014 B2, issued Sept. 6, 2011) and Allen (US 2010/0203963 A1, published Aug. 12, 2010); and (2) claims 1, 2, 4, and 6–20 as

¹ The Examiner designated this rejection as a NEW GROUND OF REJECTION in the Answer. Examiner's Answer 2 (hereinafter "Ans.") (dated July 31, 2015).

unpatentable over Allen and Low. Claims 3 and 5 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

The claimed subject matter relates to “computer-implemented online games, such as online role-playing games, playable by more than one person from more than one location.” *See* Spec. ¶ 2, Fig. 5. Claims 1, 17, and 18 are independent.

Claim 1 is illustrative of the claimed subject matter and recites:

1. A method comprising:

hosting an online game for a plurality of players, each of the plurality of players controlling at least one of a plurality of characters in the online game;

continually accessing a plurality of in-game parameters employed to identify characters who qualify for an in-game reward provided via the online game, current values of at least some of the in-game parameters changing as the online game progresses, the plurality of in-game parameters comprising a total amount of an in-game asset possessed by at least some of the plurality of characters in the online game;

continually updating, using at least one processor of a machine, a current acquisition requirement for the in-game reward based on the current values of the plurality of in-game parameters, the current acquisition requirement comprising a current in-game asset requirement, the current in-game asset requirement comprising a required amount of the in-game asset possessed by a character in the online game, the required amount of the in-game asset being based on the total amount of the in-game asset possessed by the at least some of the plurality of characters in the online game; and

providing, using at least one processor of the machine, the in-game reward to at least one of the plurality of characters responsive to satisfaction of the current acquisition requirement by the at least one of the plurality of characters.

ANALYSIS

Patent-Ineligible Subject Matter

Claims 1, 2, 4, and 6–20

The Supreme Court has established “a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S. Ct. 1289, 1294 (2012)). Under that framework, we first “determine whether the claims at issue are directed to one of those patent-ineligible concepts”—i.e., a law of nature, a natural phenomenon, or an abstract idea. *Id.* If so, we secondly “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application. *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297). The Supreme Court has described the second step of the analysis as “a search for an ‘inventive concept’—i.e., 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.’” *Id.* (alteration in original) (quoting *Mayo*, 132 S. Ct. at 1294).

The Examiner determines that “[c]laims 1-2, 4, and 6-20 are directed to an abstract idea, namely, a method of organizing human activity which does not require the necessary involvement of a particular machine nor the transformation of any article.” Ans. 2 (emphasis omitted). The Examiner further determines that:

In regard to Claims 1, 2, 4, and 6-20, while an “online game” is claimed, limiting the claimed abstract idea to a particular technological environment (i.e. the internet) is an attempt to limit the idea to a particular technological environment and, thereby, insufficient to include elements that are significantly more than the judicial exception.

In regard to Claims 1, 2, 4, and 6-16, while a “processor of a machine” is claimed, such a processor is a generic, well-known and conventional computer device, as is the ability of a processor to execute computerized instructions a generic, well-known and conventional computer function.

In regard to Claim 17, while a “non-transitory computer-readable medium comprising instructions” is claimed, such a medium is a generic, well-known and conventional computer device, as is the ability of a processor to execute computerized instructions a generic, well-known and conventional computer function.

In regard to Claims 18-20, while an “online game system” is claimed, not machine nor transformation of any article is also claimed and the “system” could thereby be one employed by a human being in his/her head along with the involvement of other human beings.

Ans. 4 (emphasis omitted) (citation omitted).

Appellants offer the same arguments for independent claims 17 and 18 as for claim 1 and do not offer arguments in favor of dependent claims 2, 4, 6–16, 19, and 20 separate from those presented for the independent claims. *See* Reply Br. 4–16.² We select claim 1 as the representative claim, and claims 2, 4, and 6–20 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

² Reply Brief (hereinafter “Reply Br.”) (filed Sept. 30, 2015).

Appellants contend that:

[C]laim 1 shows that the claim is not merely directed to a “method of organizing human activity.” On the contrary, . . . the technical advantage of the disclosed subject matter provides, in some examples, continual update of in-game parameters and current acquisition requirements for an in-game reward using at least one processor of a machine. A processor of a machine is then used to provide an in-game reward based on satisfaction of a complex current acquisition requirement.

Reply Br. 7.

Appellants further contend that:

[The] elements of independent claim 1 are beyond the scope of what is possible for a human hosting a game using mental processes or a pen and paper. Instead, claim 1 provides a computer implemented method to perform steps in an online game to use a computer to perform operations beyond what is possible for a human, and the claims are necessarily rooted in computer technology to overcome a problem specifically arising in that realm.

Reply Br. 12; *see also id.* at 11 (Claim 1 “and the corresponding dependent claims are necessarily rooted in computer technology to overcome a problem specifically arising in that realm.”).

As an initial matter, Appellants do not apprise us *how* “the claims are necessarily rooted in computer technology to overcome a problem specifically arising in that realm.” *See id.* In this case, Appellants do not apprise us of error in the Examiner’s finding that claim 1 is directed to “a method of organizing human activity.” *See* Ans. 2–3. Other than the benefit of performing the claimed method more efficiently via a processor, Appellants do not explain why the claimed method could not be performed by a human.

Further, Appellants' Specification does not describe any new or unique computer hardware or software, and the law is clear that simply reciting language that calls for programming a computer to perform what would otherwise be an abstract idea is not sufficient to impart patent eligibility. *See Spec. e.g.*, ¶¶ 55, 60, 63; *see also Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. at 2359.

Appellants contend that claim 1 is “not directed to a fundamental economic practice long prevalent in our system of commerce because these independent claims provide limitations that go beyond any practice long prevalent.” Reply Br. 8. In particular, Appellants contend that:

[Claim 1 does] *not* seek to tie up all systems, methods, or media for online games or even systems for providing in-game rewards as part of an online game.[] Instead, claim 1 is directed to, specific systems which involve “continually accessing a plurality of in-game parameters employed to identify characters who qualify for an in-game reward provided via the online game, current values of at least some of the in-game parameters changing as the online game progresses, the plurality of in-game parameters comprising a total amount of an in-game asset possessed by at least some of the plurality of characters in the online game.” Claim 1 is thus describing a specific system for continually updating and identifying rewards based on a total amount of an in-game asset as the total amount of the in-game asset for some or all of a plurality of characters changes.

Reply Br. 12–13. As such, Appellants conclude that “[g]iven the particularities of the ways in which each operation is performed and the particularities of the actors performing the operations, independent claim 1 cannot and does not preempt the making, using, and selling of basic tools of scientific and technological work.” *Id.* at 16.

The Supreme Court has stated that “patents that . . . integrate the building blocks [of human ingenuity] into something more, []thereby transform[ing] them into a patent-eligible invention . . . pose no comparable risk of pre-emption, and therefore remain eligible for the monopoly granted under our patent laws.” *Alice*, 134 S. Ct. at 2354–55 (citations and quotations omitted). Although preemption “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*id.* at 2354 (citing *Mayo*, 132 S. Ct. at 1293)), “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) (“[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.”). Thus, even assuming claim 1 recites a particular application of “continually updating and identifying rewards” (*see* Reply Br. 12–13)—such that claim 1 does not preempt the entirety of the identified abstract idea—that does not demonstrate that claim 1 is directed to patent-eligible subject matter.

As to step one of the *Alice* framework, claim 1 is similar to claims directed to the collection, organization, and manipulation of data that our reviewing court has found to be directed to patent-ineligible abstract ideas. For example, in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (2016), the court held that claims drawn to systems and methods for performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results were directed to the abstract idea of “collecting

information, analyzing it, and displaying certain results of the collection and analysis.” *Id.* at 1352, 1353. Similarly, in *Content Extraction & Transmission LLC v. Wells Fargo Bank, National Ass’n*, 776 F.3d 1343 (Fed. Cir. 2014), the court held that claims generally reciting “a method of 1) extracting data from hard copy documents using an automated digitizing unit such as a scanner, 2) recognizing specific information from the extracted data, and 3) storing that information in a memory,” were drawn to an abstract idea. *Id.* at 1345, 1347.

Appellants further contend that the “continually accessing” and “continually updating” steps of claim 1 “are specific detailed steps related to a particular technological solution implemented using a processor of a machine” and that these “elements of claim 1 as performed on a processor of a machine for an online game system, however, do qualify as substantially more than any abstract idea, as they do not simply recite routine conventional activities and cannot be performed by a human.” Reply Br. 13–14. However, as discussed above, other than the benefit of performing the claimed method more efficiently via a processor, Appellants do not explain why the claimed method could not be performed by a human. Further, Appellants do not explain the “particular technological solution” implemented by the “continually accessing” and “continually updating” steps of claim 1. *See id.*

As to step two of the *Alice* framework, we agree with the Examiner that the elements of claim 1, considered both individually and as an ordered combination, do not transform the nature of the claim into a patent-eligible application of the abstract idea. *See* Ans. 3 (“[T]he claims do not include additional elements that are sufficient to amount to significantly more than

the judicial exception.”). Claim 1 recites an “online game” method that uses “at least one processor” to “continually updat[e]” and “provid[e]” data.

Appeal Br. 13, Claims App. “[M]ere . . . generic computer implementation” of an abstract idea does not transform the abstract idea into patent-eligible subject matter. *Alice*, 134 S. Ct. at 2357. Here, the claims do not require any specialized technology or device, but only generic computer equipment. In fact, Appellants’ Specification describes the elements of hardware system 700, described in paragraph 60 and illustrated in Figure 7 of the drawings, as being “intended to represent a broad category of computer hardware systems.” Spec. ¶ 60, Fig. 7; *see also id.* at ¶ 63 (“Any suitable operating system may be used.”). In *DDR Holdings*, the court held that claims “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” such as the Internet, were patent eligible. *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). Here, however, claim 1 does not recite a specific technological solution to a specific problem unique to the Internet, as was the case in *DDR Holdings*; *see also Elec. Pwr. Grp.*, 830 F.3d at 1355 (Claim elements that require no more than conventional computer, network, and display technology are insufficient to constitute “an inventive concept in the application of an abstract idea.”).

For the above reasons, we sustain the Examiner’s rejection of claim 1 as directed to patent-ineligible subject matter. We further sustain the rejection of claims 2, 4, and 6–20, which fall with claim 1.

Obviousness over Low and Allen

Claims 1, 2, 4, and 6–19

Each of independent claims 1, 17, and 18 recites, “the current in-game asset requirement comprising a required amount of the in-game asset possessed by a character in the online game,” wherein “the required amount of the in-game asset being based on the total amount of the in-game asset possessed by the at least some of the plurality of characters in the online game.” Appeal Br. 13, 15–16, Claims App.³ The Examiner relies on Low for this limitation. In particular, the Examiner finds that:

Low teaches the claimed “in-game asset possessed by at least some of the plurality of players in the online game” via its teaching that a player is provided a rank by the gaming system “based on the relative amounts of total wagers placed by the players during [a] designated time period” (see, col. 34, lines 55–65). In other words, *Low* teaches each player holds an “in-game asset” in terms of each player’s level of wagering activity, and that, furthermore, *Low* teaches that a player may qualify for a reward (i.e. the system sets a “current in-game asset requirement”) based on each player’s individual level of wagering activity relative to the total level of wagering activity of all of the other players (i.e. the asset requirement thereby “based on the total amount of the in-game asset possessed by at least some of the plurality of players in the online game.”) See, e.g., *Low* at col. 3, lines 30–45 in regard to tracking total wager activity and col. 3–4 in regard to ranking based on that activity.

Ans. 5–6; *see also* Final Act. 2–3.⁴

Appellants contend that “*Low* does not teach or suggest an acquisition requirement ‘comprising a current in-game asset requirement based on the

³ Appeal Brief (hereinafter “Appeal Br.”) (filed Apr. 13, 2015).

⁴ Final Office Action (hereinafter “Final Act.”) (dated Oct. 10, 2014).

total amount of the in-game asset possessed by the at least some of the plurality of players in the online game.” Reply Br. 4; *see also* Appeal Br. 8–9. In particular, Appellants contend that “[b]y Appellants’ definition, a ‘level of wagering activity’ is not equivalent to an ‘in-game asset’” that “this is further shown by the claim recitation . . . that the total amount of the in-game asset is *possessed* by the at least some of the plurality of players in the online game” and that the Examiner “indicates that players ‘possess’ their level of wagering activity through control over wagering.” *Id* at 3.

However, Appellants contend that:

[C]ontrol over transferring real-world cash to a game operator to increase a level of wagering activity is not equivalent to possessing an in-game asset. Instead, in game assets such as those recited in paragraph 5 [of the subject application] (*e.g.* “number of gold coins (*i.e.*, the assets)”) are in-game items “possessed” by players in an online game.

Id. at 3–4; *see also* Appeal Br. 8–9.

As an initial matter, we agree with Appellants that the Specification defines the term “in-game asset” to mean “loot” and provides various examples of “in-game assets.” Spec. ¶ 5; *see also* Reply Br. 2–4. Where an explicit definition is provided by the applicant for a term, the definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consol. Indus. Inc.*, 199 F.3d 1295, 1301 (Fed. Cir. 1999). In this case, we understand the Examiner’s position that “a player may qualify for a reward (*i.e.* the system sets a ‘current in-game asset requirement’) based on each player’s individual level of wagering activity relative to the total level of wagering activity of all of the other players.” Ans. 5. However, the Examiner fails to provide sufficient evidence or technical reasoning to

adequately explain *how* basing *a player's* qualification for a reward (i.e., a current in-game asset requirement) on each player's individual level of wagering activity in view of the total level of wagering activity of all the players is indicative of "the total amount of the *in-game asset possessed by the at least some of the plurality of players* in the online game." See Ans. 5; see also Appeal Br. 8–9; Reply Br. 3–4. Stated differently, the Examiner fails to adequately explain how "tracking total wager activity" and "ranking based on that activity," as disclosed in Low, is indicative of "the asset requirement" being "based on the total amount of the in-game asset possessed by at least some of the plurality of players in the online game." See Ans. 5–6. As such, the Examiner fails to establish that Low discloses that the current in-game asset requirement is based on the total amount of the in-game asset possessed by the at least some of the plurality of players in the online game. See Final Act. 2–3; see also Ans. 5–6.

Accordingly, for the foregoing reasons, we do not sustain the Examiner's rejection of claims 1, 2, 4, and 6–19 as unpatentable over Low and Allen.

Obviousness over Allen and Low

Claims 1, 2, 4, and 6–20

The Examiner's rejection of claims 1, 2, 4, and 6–20 as unpatentable over Allen and Low is based on the same unsupported findings and conclusions discussed above with respect Low. See Final Act. 7–8. The Examiner does not rely on Allen to remedy the deficiencies of Low. See *id.*; see also Reply Br. 4 ("In both rejections . . . Low is relied upon to teach 'comprising a current in-game asset requirement based on the total amount of the in-game asset possessed by the at least some of the plurality of players

in the online game.”). Accordingly, for reasons similar to those discussed above for claims 1, 17, and 18, we do not sustain the Examiner’s rejection of claims 1, 2, 4, and 6–20 as unpatentable over Allen and Low.

DECISION

We AFFIRM the decision of the Examiner to reject claims 1, 2, 4, and 6–20 as being directed to patent-ineligible subject matter.

We REVERSE the decision of the Examiner to reject claims 1, 2, 4, and 6–19 as unpatentable over Low and Allen.

We REVERSE the decision of the Examiner to reject claim 1, 2, 4, and 6–20 as unpatentable over Allen and Low.

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

AFFIRMED