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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* MARK BALDRICK and SANJEEVA KUMAR

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Appeal 2016-001391<sup>1</sup>  
Application 13/599,739<sup>2</sup>  
Technology Center 3600

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Before ANTON W. FETTING, BIBHU R. MOHANTY, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1–3, 6–10, 12, 13, and 21–30. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our Decision considers Appellants’ Appeal Brief (“Appeal Br.,” filed May 29, 2015) and Reply Brief (“Reply Br.,” filed Nov. 17, 2015), as well as the Examiner’s Final Office Action (“Final Act.,” mailed Nov. 4, 2014) and Answer (“Ans.,” mailed Sept. 21, 2015).

<sup>2</sup> Appellants identify Visa International Service Association as the real party in interest. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

The invention “relates to methods, systems, and devices for financial data processing,” and more specifically to “automatic refreshing of back-end authorizations of credit card and other payment transactions by payment service providers.” Spec. ¶ 3. Claims 1, 12, and 13 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of refreshing authorizations for expired payment transactions, the method comprising:
  - receiving, at a payment service provider computer operatively coupled with a memory, an authorization approval message from a payment processor across a network confirming that a customer account has money or credit for a payment transaction and that the money or credit has been reserved across said network for the payment transaction;
  - estimating, by the payment service provider computer operatively coupled with the memory, whether the reservation across the network of money or credit has expired by comparing a time that has elapsed since the authorization approval message was received across the network to a threshold time;
  - automatically generating, at the payment service provider computer operatively coupled with the memory, a request message for re-authorizing the reservation of money or credit in the customer account for the payment transaction based on an estimation that the reservation of money or credit across the network has expired; and
  - automatically sending from the payment service provider computer across the network to the payment processor the request message.

### REJECTION

Claims 1–3, 6–10, 12, 13, and 21–30 are rejected under 35 U.S.C. § 101 as non-statutory subject matter.

## ANALYSIS

As an initial matter, we disagree with Appellants' assertion that the Examiner's rejection lacks evidence and fails to set forth a prima facie case of non-statutory subject matter. Appeal Br. 10–11; Reply Br. 2. The Federal Circuit has held that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (citation omitted). All that is required of the Office is to set forth the statutory basis of the rejection, as well as any reference on which the rejection relies, in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.* at 1363; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (“Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

Here, in rejecting the claims under 35 U.S.C. § 101 for being directed to non-statutory subject matter, the Examiner analyzes the claims using the two-step framework set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1296–97 (2012) and reiterated in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014), which considers, in the first step, whether the claims are directed to a patent-ineligible concept, e.g., an abstract idea, and then, in a second step, whether the claims, individually and as an ordered combination, recite an inventive concept—an element or combination of elements sufficient to ensure that the

claims amount to significantly more than the abstract idea and transform the nature of the claims into a patent-eligible concept. Specifically, pursuant to the first step, the Examiner finds the claims are directed to “refreshing authorizations for payment transactions” which is a fundamental economic practice and a method of organizing human activity and, therefore, an abstract idea. Final Act. 4; Ans. 2, 4. Under the second step, the Examiner finds the claims do not include additional elements amounting to significantly more than the abstract idea because the claims are mere instructions to implement the abstract idea on a generic computer. Final Act. 4, Ans. 2, 5.

Given the Examiner notifies Appellants that the claims are ineligible pursuant to the two-step framework for determining patent-eligibility, the Examiner’s rejection satisfies the notice requirement of § 132. Furthermore, there is no indication that Appellants do not recognize or understand the Examiner’s rejection, as Appellants’ understanding is manifested in their arguments traversing it. Accordingly, the Examiner has established a prima facie case of non-statutory subject matter, and we turn to Appellants’ remaining arguments.

Appellants assert the Examiner’s characterization of the claims as being directed to “refreshing authorizations for payment transactions” is unsupported. Reply Br. 2. In particular, Appellants contend the Examiner overlooked the claimed “estimating” and “automatically generating” operations. *Id.* We disagree.

Both the language of the claims and the Specification support the Examiner’s characterization of the claims. For example, the claims include limitations reciting: receiving an authorization approval message from a

payment processor confirming a customer account has money or credit that has been reserved for a payment transaction; estimating whether the reservation has expired by comparing the elapsed time since the authorization approval message was received to a threshold time; automatically generating a request message for re-authorizing the reservation based on an estimation that the reservation has expired; and sending the request message. These limitations, including the “estimating” and “automatically generating” limitations, describe a way to refresh authorizations for payment transactions. Similarly, as set forth above, the Specification describes the invention as refreshing authorizations of payment transactions. Spec. ¶¶ 3, 18–23. Accordingly, we are not apprised of error in the Examiner’s finding that the claims are directed to “refreshing authorizations for payment transactions.”

Appellants also contend the claims are not directed to a fundamental economic practice. Appeal Br. 10; Reply Br. 2. This argument does not apprise us of error.

To determine whether what a claim is directed to is an abstract idea, our reviewing court has explained:

[T]he decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided. *See, e.g., Elec. Power Grp.*, 830 F.3d at 1353–54. That is the classic common law methodology for creating law when a single governing definitional context is not available. *See generally* Karl N. Llewellyn, *The Common Law Tradition: Deciding Appeals* (1960). This more flexible approach is also the approach employed by the Supreme Court. *See Alice*, 134 S. Ct. at 2355–57. We shall follow that approach here.

*Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (footnote omitted). Here, the Examiner compares the concept of “refreshing authorizations for payment transactions” to several concepts held to be fundamental economic practices and/or methods of organizing human behavior, and, thereby, abstract ideas, including: “hedging,” “mitigating settlement risk,” “creating a contractual relationship,” “processing loan information,” “managing an insurance policy,” and “generating rule-based tasks for processing an insurance claim.” Ans. 5 (citations omitted). Like the concepts determined to be abstract ideas, the concept of “refreshing authorizations for payment transactions” is a business practice, and, as Appellants point out, “reserving money or credit goes way back” (Appeal Br. 11). We, therefore, see no meaningful distinction between these concepts held to be abstract ideas and the concept of “refreshing authorizations for payment transactions.”

Appellants further argue the claims include additional elements amounting to significantly more than the abstract idea because the claims recite elements in a specific computer networked domain. Appeal Br. 11–13; Reply Br. 2–3. According to Appellants, the claimed invention addresses the payment network-centric challenge of simultaneously preventing authorization denials when a settlement request is sent too late after an original authorization message, as well as minimizing increased processing load if duplicate authorization messages are sent too early. Reply Br. 2–3.

At the outset, we acknowledge the claims recite various computer components for performing the recited functions. However, as the Examiner finds, and Appellants do not refute, there is no indication that the recited

computer hardware components are something other than generic, conventional computing components. Ans. 5–8; Spec. ¶¶ 43–46, 77–79, Fig. 9. Furthermore, the claims do not recite any technical details as to how the computer components perform the recited functions. For example, the claims do not describe how the payment service provider computer receives an authorization message or how the computer automatically generates and automatically sends a request for re-authorization.

Turning to the claims as an ordered combination, even if we agree with Appellants that the claimed invention addresses a payment network-challenge associated with the timing of sending a request for re-authorization of a reservation of money or credit, the timing of a request for re-authorization is not an issue unique to computers or computer networks. Although the concern of timing a request for re-authorization is perhaps exacerbated when the parties involved in processing a payment are communicating over a computer network, the timeliness of a request for re-authorization is an issue whether the parties communicate over a computer network or not.

Accordingly, the claimed invention is not deeply rooted in computer networks or an improvement to computer networks. Rather, as the Examiner finds, the claims represent the generic computer implementation of an abstract business practice, which is insufficient to confer patent-eligibility. Ans. 5, 7; *see also DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[T]hese claims in substance were directed to nothing more than the performance of an abstract business practice on the Internet or using a conventional computer. Such claims are not patent-eligible.”).



Appellants additionally argue the claimed novel use of estimation combined with authorization and re-authorization messages is significantly more than the abstract idea. Appeal Br. 14. This argument does not apprise us of error inasmuch as it relies on the alleged novelty of the claimed invention. In considering whether the claims amount to significantly more, the Federal Circuit has held: “a claim for a new abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016).

Appellants further contend the claims do not wholly preempt the field of re-authorizing reservations for expired payment transactions. Appeal Br. 14–16. This argument does not apprise us of error in the Examiner’s rejection. Although preemption may be the concern driving the exclusion of abstract ideas from patent-eligible subject matter, preemption is not the test for eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354).

In view of the foregoing, we are not apprised of error in the Examiner’s determination that the claims are directed to non-statutory subject matter. We, therefore, sustain the rejection of claims 1–3, 6–10, 12, 13, and 21–30 under 35 U.S.C. § 101.

#### DECISION

The Examiner’s decision to reject claims 1–3, 6–10, 12, 13, and 21–30 is affirmed.

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

AFFIRMED