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Roberts Mlotkowski Safran Cole & Calderon, P.C.
Intellectual Property Department
P.O. Box 10064
MCLEAN, VA 22102-8064

EXAMINER
TORRICO-LOPEZ, ALAN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM P. SHAOUY

Appeal 2016-002093
Application 11/849,738[1]
Technology Center 3600

Before, JOSEPH A. FISCHETTI, CYNTHIA L. MURPHY, and TARA L. HUTCHINGS, *Administrative Patent Judges*.

FISCHETTI, *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 Rejection of claims 1, 3, 4, 6, 8–10, 12–15, 17–23, 26, 28 and 30–34. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM IN PART.

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[1] Appellant identifies International Business Machines Corporation as the real party in interest. Br. 2.

THE INVENTION

Appellant's "invention generally relates to a system and method of managing and prioritizing tasks amongst resources and, more particularly, to a system and method for providing automatic task assignment and notification amongst globally dispersed human resources." (Spec. ¶ 1)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A system comprising:

a processor operable to:

retrieve a list of geographically-dispersed resources, wherein a resource table associates each of the geographically-dispersed resources with a respective plurality of skills;

poll a message application to determine which of the geographically dispersed resources is online and currently working;

retrieve a list of tasks from a task table by:

determining that one or more tasks in the task table are associated with a respective plurality of required skills, and

retrieving the one or more tasks;

determine that a first task of the list of tasks matches a first member of the geographically dispersed resources by comparing the respective plurality of required skills of the first task with the respective plurality of skills of the first member;

retrieve a list of current tasks assigned to the first member;

determine that each of the current tasks in the list of current tasks assigned to the first member is lower in priority than the first task; and

reassign ownership of the one of the first task to the first member,

wherein:

a low-priority thread of the processor uses an infinite loop to poll a change of management application for a latest list of newly created or modified tasks which are yet to be started; and

the processor is further operable to add the newly created or modified tasks to the task table and associate each of the newly created or modified tasks with a plurality of required skills.

Appeal Br. 41 (Claims App'x).

THE REJECTION

The following rejection is before us for review.

Claims 1, 3-4, 6, 8-10, 12-15, 17-23, 26, 28 and 30-34 are rejected under 35 U .S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

ANALYSIS

35 U.S.C. § 101 Rejection

Claim 26 is representative of the independent claims before us on appeal, which contain similar limitations, and is a method claim of steps which recite, in pertinent part, *viz.*

polling. . . a list of geographically dispersed resources to determine which geographically dispersed resources are online and currently working, wherein the list associates each of the geographically dispersed resources with a respective plurality of skills;

retrieving . . . a latest list of tasks from a task table by:

determining that required skills information associated with one or more tasks in the task table is not null; and

retrieving the one or more of the tasks;

prioritizing each of the retrieved tasks for selected ones of the geographically dispersed resources;

notifying . . . the selected ones of the geographically dispersed resources of a newly assigned task and its priority;

determining . . . that a first task of the latest list of tasks matches one of the geographically dispersed resources by comparing a respective plurality of required skills of the first task with the respective plurality of skills of the one of the geographically dispersed resources;

retrieving . . . a list of current tasks assigned to the matched one of the geographically-dispersed resources;

determining . . . that each of the current tasks in the list of current tasks assigned to the matched one of the geographically-dispersed resources is lower in priority than the one of the retrieved tasks; and

reassigning . . . ownership of the one of the retrieved tasks to the matched one of the geographically-dispersed resources,

wherein the method further comprises:

using a low-priority thread which uses an infinite loop to poll for a latest list of newly created or modified tasks which are yet to be started; and

adding the newly created or modified tasks to the task table and associate each of the newly created or modified tasks with a plurality of required skills.

Appeal Br. 45.

The Supreme Court

> set forth 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. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, "[w]hat else is there in the claims before us?" To answer that question, . . . 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. [The Court] described step two of this 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."

Alice Corp., Pty. Ltd. v CLS Bank Int'l, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012)) (internal citations omitted).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept.

Although the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case's claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The steps in claim 26 result in adding newly created or modified tasks to a task table and associate each of the newly created or modified tasks with a plurality of required skills. The Specification at ¶¶ 4 and 5 recites:

> [0004] A project manager is tasked with the coordination of the project by first assembling a team and then assigning the team members specific tasks that need to be accomplished to complete the project. This includes assessing the skill set and level of skill of all team members, the time that each team

> member is projected to work, the sequence of tasks that are required to complete the task, etc. As such, the project manager is thus tasked with leading the planning and the development of all project deliverables. The project manager is also thus responsible for managing the budget and work plan and all project management procedures such as, for example, scope management, issues management, risk management, etc.
>
> [0005] Thus, as can be imagined, a project team dispersed amongst many different time zones has many challenges to overcome in performing their work. This includes the coordination and collaboration of projects, amongst themselves, and the coordination and assignment of workflow by the project manager. The latter of which becomes very problematic when a project requires certain tasks to be performed in a specific sequence. So, for example, it is the responsibility of the project manager to ensure that a team member work and complete a first task, in an earlier time zone, prior to another team member undertaking a subsequently required task in a later time zone.

Thus, all this evidence shows that claim 26 is directed to assembling a team and continuously assigning the team members specific tasks that need to be accomplished to complete the project based on the assessed skill set, the level of skill of all team members, the time that each team member is projected to work, and the sequence of tasks that are required to complete the task. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972) in particular, that the claims at issue here are directed to an abstract idea. Like the algorithm in *Gottschalk*, assembling a team and continuously assigning the team members specific tasks that need to be accomplished to complete the project based on the assessed skill set, level of skill of all team members, the time that each team member is projected to work, and the sequence of tasks that are required to complete the task, is an abstract concept that preempts all implementations and uses.

The scheme of assembling a team based on these items is a method of organizing through task assignment, human behavior, which is an abstract idea. *See Alice*, 134 S. Ct. at 2355–1257. Also, the claimed steps, e.g., polling, determining, and reassigning, are all steps that we as humans go through in our own minds. We treat "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). Thus, we find that the claimed task assignment method is an "abstract idea" beyond the scope of § 101.

As in *Alice*, we need not labor to delimit the precise contours of the "abstract ideas" category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of performing a mathematical algorithm in *Gottschalk* and the concept of assembling a team based e.g., on an assessed skill set, level of skill of individuals, and task priorities, at issue here. Both are squarely within the realm of "abstract ideas" as the Court has used that term. *See Alice*, 134 S. Ct. at 2357. That the claims do not preempt all forms of the abstraction or may be limited to the abstract idea in the project management setting (Specification 2: ¶4), does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–61 (Fed. Cir. 2015). Perhaps more to the point, claim 1 does no more than assign tasks based on the perception of skill necessary to accomplish a prioritized task. Perception is a disembodied concept that is the epitome of abstraction.

The introduction of a computer/processor into the claims does not alter the analysis at *Mayo* step two.

> the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea "while adding the words 'apply it'" is not enough for patent eligibility. Nor is limiting the use of an abstract idea "'to a particular technological environment.'" Stating an abstract idea while adding the words "apply it with a computer" simply combines those two steps, with the same deficient result. Thus, if a patent's recitation of a computer amounts to a mere instruction to "implemen[t]" an abstract idea "on ... a computer," that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of "additional featur[e]" that provides any "practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself."

Alice, 134 S. Ct. at 2358 (alterations in original) (citations omitted).

"[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer." *Alice*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to take in data and compute a result from a database amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

But here, Appellant argues,

> the presently claimed invention provides a low-priority thread of a processor which uses an infinite loop to poll a change of management application for a latest list of newly created or modified tasks which are yet to be started, and the processor adds the newly created or modified tasks to the task table and associates each of the newly created or modified tasks with a plurality of required skills.

(Appeal Br. 8).

We disagree with Appellant because nothing in the generic use of a processor thread, infinite loop, and/or a task table, as recited in the claims, shows any use of these features other than as conventionally used in a computer system, and thus Appellant's argument is not persuasive of an *Alice* part two qualification. Nor do we find anything more than well-understood, routine, conventional activities previously known to the industry of using instant messaging to poll whether one is working on-line as recited in dependent claims 3 and 18, or the use of interfacing to connect parts of a network system as recited in dependent claim 4. (*See* Appeal Br. 14–15).

Considered as an ordered combination, the computer components of Appellant's method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellant's claims simply recite the concept of assembling a team based on the assessed skill set and level of skill of individuals, and task priorities. The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than instructions to assemble a team based on the assessed skill set and level of skill of individuals, and task priorities, on a generic computer. Under our

precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

As to the structural claims, they

> are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long "warn[ed] ... against" interpreting § 101 "in ways that make patent eligibility 'depend simply on the draftsman's art.'

Alice, 134 S. Ct. at 2360 (alterations in original).

Appellant argues,

> Appellant submits that the Examiner has failed to articulate and explain (i) how and why the claimed invention is not patent eligible, (ii) how and why the claimed invention falls into a judicial exception, and (iii) how and why the claimed invention and the additional elements do not add significantly more that the exception.

(Appeal Brief 13).

We disagree with Appellant. We refer to the Answer on pages 2–15 in which the Examiner addresses the rejected claims with a detailed analysis using the pertinent parts of the *Alice* two-part test, covering 13 pages of text. Accordingly, we find no deficiency in the Examiner's prima facie case.

The Appeal Brief presents similar arguments against the rejection of each of the other independent claims 1, 17, and 30 as those advanced for claim 26. (*See* Appeal Br. 8–13, 19–23, 27–31 and 34–38). Therefore, we find these arguments unpersuasive for the same reasons we found unpersuasive for independent claim 26 *supra*.

However, we disagree with the Examiner that dependent claims 9, 31, 32, 33 and 34, only "further limit the abstract idea and, therefore, are

directed to the abstract idea and do not amount to 'significantly more.'" Ans. 5.

Claim 9 is directed to a pointer pointing to the change of management application, and specifically claims the priority value as an integer which designates a priority of a respective one of the plurality of the tasks. A pointer is a term of art in the computer industry and connotes a specific type of data recall mechanism which we find cannot constitute an abstract idea.

Dependent claims 31, 32, 33 and 34 each require "the change of management application that is a standalone web application separate from the computer infrastructure." This item does not relate to the abstract idea of assembling a team and continuously assigning the team members specific tasks that need to be accomplished to complete the project as discussed above, and thus we find this feature constitutes an improvement to a technical field or technology. Absent a showing to the contrary in the record, we find that providing the change of management application as a standalone web application separate from the computer infrastructure constitutes a specific means for improving throughput and effect a faster running system. *See McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

CONCLUSIONS OF LAW

We conclude the Examiner did err in rejecting claims 9, 31, 32, 33 and 34 under 35 U.S.C. § 101.

We conclude the Examiner did not err in rejecting claims 1, 3, 4,6, 8, 10, 12–15, 17–23, 26, 28 and 30 under 35 U.S.C. § 101.

DECISION

The decision of the Examiner to reject claims 1, 3, 4, 6, 8–10, 12–15, 17–23, 26, 28 and 30–34 is affirmed in part.

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)(iv).

AFFIRMED-IN-PART