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 DAVID L. SNYDER,
JEREMY M. WATERMAN,
BRUCE M. THOMPSON,
ANTHONY M. VITO,
and BHASKARAN BALAKRISHNAN

_____

Appeal 2016–003606
Application 12/482,356
Technology Center 3600

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Before ANTON W. FETTING, BRUCE T. WIEDER, and
TARA L. HUTCHINGS, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

David L. Snyder, Jeremy M. Waterman, Bruce M. Thompson, Anthony
M. Vito, and Bhaskaran Balakrishnan (Appellants) seek review under
35 U.S.C. § 134(a) of a final rejection of claims 18–30, the only claims

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[1] Our Decision will make reference to the Appellants' Appeal Brief ("App.
Br.," filed May 22, 2015) and Reply Brief ("Reply Br.," filed February 24,
2016), and the Examiner's Answer ("Ans.," mailed December 24, 2015),
and Final Action ("Final Act.," mailed December 26, 2014).

pending in the application on appeal. We have jurisdiction over the appeal

pursuant to 35 U.S.C. § 6(b).

The Appellants invented performing real-time multidimensional

constraint analysis of financial instruments that comprise a portfolio.

Specification para. 4.

An understanding of the invention can be derived from a reading of

exemplary claim 18, which is reproduced below (bracketed matter and some

paragraphing added).

> 18. A method of analyzing a portfolio comprising at least one
> financial instrument, the method comprising:
>
> [1] displaying individual status graphs,
>
>> each individual status graph representing an asset class of
>> a portfolio,
>>
>> each individual status graph having a graphical level
>> indicator representing a target allocation for the
>> respective asset class,
>>
>> each individual status graph having graded scale
>> deviation indicators adjacent the respective level
>> indicator;
>
> [2] receiving a set of financial instrument allocations of
> financial instruments,
>
>> each financial instrument having one or more underlying
>> asset classes corresponding to those of the portfolio;
>
> [3] computing, using at least one processor operatively coupled
> with a memory, a working portfolio asset class allocation
>
>> for each of the asset classes
>>
>> based on the received set of financial instrument
>> allocations;

[4] displaying on the level indicator or deviation indicators of the respective individual status graph

the computed working portfolio asset class allocation for each of the asset classes;

[5] accepting an update from a user to the set of financial instrument allocations;

[6] calculating, using the at least one processor operatively coupled with the memory, an updated working portfolio asset class allocation

for each of the asset classes

based on the updated set of financial instrument allocations;

and

[7] displaying on the level indicator or deviation indicators of the respective individual status graph

the updated working portfolio asset class allocation for each of the asset classes.

Claims 18–30 stand rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter.[2]

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[2] Examiner nominally presents a new ground of rejection section. Ans. 3–6. Upon inspection, this section does not contain a new, or any, ground of rejection, but is instead a claim construction finding that certain limitations are to be construed under 35 U.S.C. § 112(f). Appellants do not rely on such construction in their arguments and have not pointed out where the Specification describes structures under such construction.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice as to what a computer is to do without implementation details.

ANALYSIS

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 Intl, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner finds the claims directed to operation of a system for analysis of portfolios which is a fundamental economic practice. Final Act. 3.

While 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 preamble to claim 18 recites that it is a method of analyzing a portfolio comprising at least one financial instrument. The steps in claim 18 result in displaying portfolio assets allocations on a graph with level or deviation indicators. The Specification at paragraph 4 recites that the invention relates to performing real-time multidimensional constraint analysis of financial instruments that comprise a portfolio. Thus, all this evidence shows that claim 18 is directed to portfolio analysis, i.e. financial analysis.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v. Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of financial analysis is a fundamental business practice long prevalent in our system of commerce. The use of financial analysis is also a building block of the finance and accounting industries. Thus, financial analysis, like hedging, is an "abstract idea" beyond the scope of § 101. *See Alice Corp. Pty. Ltd.* at 2356.

As in *Alice Corp. Pty. Ltd.*, 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 risk hedging in *Bilski* and the concept of financial

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analysis at issue here. Both are squarely within the realm of "abstract ideas" as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *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 18, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data entry, analysis, and display and 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 18 is directed to the abstract idea of entering, analyzing, and displaying data.

The remaining claims merely describe the parameters for such analysis. We conclude that the claims at issue are directed to a patent-ineligible concept.

The introduction of a computer 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 Corp. Pty. Ltd., 134 S.Ct. at 2358 (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 Corp. Pty. Ltd.,* 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 receive, analyze, and display data amounts to electronic data query and retrieval—among 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.

Considered as an ordered combination, the computer components of Appellants' method add nothing that is not already present when the steps

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are considered separately. Viewed as a whole, Appellants' method claims simply recite the concept of financial analysis as performed by a generic computer. To be sure, the claims recite doing so by advising one to compute a working portfolio asset class allocation for asset classes based on allocation data, accept changes, and compute and display an updated working portfolio asset class allocation for each class. But this is no more than abstract conceptual advice on the parameters for such financial analysis and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method claim does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The more than 30 pages of Specification spell out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of financial analysis under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of financial analysis using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.* 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 Corp. Pty. Ltd. at 2360.

We are not persuaded by Appellants' argument that the Examiner has failed to provide evidence that the operation of a system for analyzing portfolios is a fundamental economic practice. App. Br. 11–12. We show the intrinsic record provides sufficient evidence *supra*.

We are not persuaded by Appellants' argument that the Examiner has failed to provide evidence that the claims are directed to nothing significantly more than the operation of a system for analyzing portfolios. App. Br. 12–15. We show the intrinsic record provides sufficient evidence *supra*.

Appellants further argue that the asserted claims are akin to the claims found patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014). In *DDR Holdings*, the Court evaluated the eligibility of claims "address[ing] 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." *Id.* at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no "pre-Internet analog." *Id.* at 1258. The Court cautioned, however, "that not all claims

purporting to address Internet-centric challenges are eligible for patent."
Id. For example, in *DDR Holdings* the Court distinguished the patent-
eligible claims at issue from claims found patent-ineligible in
Ultramercial. *See id.* at 1258–59 (citing *Ultramercial, LLC v. Hotels.com,
L.P.* 772 F.3d 709, 714–16 (Fed. Cir. 2014)). As noted there, the
Ultramercial claims were "directed to a specific method of advertising and
content distribution that was previously unknown and never employed on
the Internet before." *Id.* at 1258 (quoting *Ultramercial,* 772 F.3d at
715–16). Nevertheless, those claims were patent ineligible because they
"merely recite[d] the abstract idea of 'offering media content in exchange
for viewing an advertisement,' along with 'routine additional steps such as
updating an activity log, requiring a request from the consumer to view the
ad, restrictions on public access, and use of the Internet.'" *Id.*

Appellants' asserted claims are analogous to the claims found
ineligible in *Ultramercial* and distinct from the claims found eligible in
DDR Holdings. The ineligible claims in *Ultramercial* recited "providing
[a] media product for sale at an Internet website;" "restricting general
public access to said media product;" "receiving from the consumer a
request to view [a] sponsor message;" and "if the sponsor message is an
interactive message, presenting at least one query to the consumer and
allowing said consumer access to said media product after receiving a
response to said at least one query." 772 F.3d at 712. Similarly,
Appellants' asserted claims recite reading, analyzing, and displaying data.
This is precisely the type of Internet activity found ineligible in
Ultramercial.

We are not persuaded by Appellants' argument that the claims are directed to significantly more than the operation of a system for analyzing portfolios. *See* App. Br. 15–16. Appellants contend the limitations that recite what is done is more than analyzing portfolios. Appellants conflate *Alice* steps 1 and 2. The first step is to find what the claims are directed to. It is the second step that then looks to what is done to achieve that. As we find *supra*, the limitations that do so are basic data processing operations, and so the steps are little more than abstract conceptual advice to perform old known data processing operations. None of the limitations affect actual computer performance.

We are not persuaded by Appellants' argument that the claims do not preempt the idea. App. Br. 16–18. That the claims do not preempt all forms of the abstraction or may be limited to the abstract idea in the e-commerce setting do not make them any less abstract. *See OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–1361 (2015). Appellants contend that because the claims are expressed in words, the claims do not preempt anything that uses different words. The issue is whether the claims recite more than abstract conceptual advice, not whether the claims are expressed atomistically in words that might be circumscribed.

We are not persuaded by Appellants' argument that:

> A specific graphical user interface is recited, along with a user's interaction with it and computations behind it. For example, claim 18 recites displaying "individual status graphs" having "graded scale deviation indicators adjacent the respective level indicator." This is followed by another displaying step in response to a user update and calculations. In some embodiments, the end result is something like working with a

> hi-fi graphic equalizer. The graphic equalizer-like interface
> solves a problem rooted in financial portfolio computations—the
> problem of visualizing changes given a multiple-input,
> multiple-output problem. And, yes, that helps in analyzing a
> portfolio. Yet clearly, this invention cannot be dismissed as
> simply analyzing a portfolio.
>
> The claimed invention is clever. Nothing else was like it
> at the time of conception. As the Examiner's own search shows,
> it is novel and nonobvious.

Reply Br. 3. As to the lack of a prior art rejection, "[g]roundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry." *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2117 (2013). "A claim for a new abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty." *Synopsys, Inc. v. Mentor Graphics Corporation*, 839 F.3d 1138, 1151 (2016).

As to the invention solving a problem rooted in financial portfolio computations, viz. the problem of visualizing changes given a multiple-input, multiple-output, financial portfolio, computations are mathematical algorithms, the epitome of abstract ideas, and any visualization *per se* is discernable only in the human mind, and afforded no patentable weight. *See In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969). The claims do not recite any implementation details as to how the visualization is created, but only recite the content within the visualization. In particular, claim 18, at most, only recites displaying some graphical level indicator along with some allocation information within a graph. This is abstract conceptual advice. The recitation to update the information is more abstract conceptual advice.

CONCLUSIONS OF LAW

The rejection of claims 18–30 under 35 U.S.C. § 101 as directed to non–statutory subject matter is proper.

DECISION

The rejection of claims 18–30 is affirmed.

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) (2011).

AFFIRMED