



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/437,157	05/19/2006	Karl Georg Hampel	16-14-5-40	9157
15800	7590	03/02/2018	EXAMINER	
Condo Roccia Koptiw LLP 1800 JFK Boulevard Suite 1700 Philadelphia, PA 19103			ALVAREZ, RAQUEL	
			ART UNIT	PAPER NUMBER
			3688	
			MAIL DATE	DELIVERY MODE
			03/02/2018	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KARL GEORG HAMPEL, WILLIAM MICHAEL
MACDONALD, NACHI K. NITHI, and VISWANATH POOSALA

Appeal 2016-003737
Application 11/437,157
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1–12 and 14–20 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to wireless communication systems and providing location-based message delivery to mobile user devices (Spec. 1, ll. 24–26). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of providing location-based services, the method comprising:

separating users associated with respective mobile user devices associated with a wireless network into at least a first group of users of a first benefit class of a location-based service and a second group of users of a second benefit class of the location-based service;

obtaining location information for said mobile user devices, wherein the location information is obtained more frequently for the mobile user devices of users in the first group than for the mobile user devices of users in the second group; and

controlling delivery of at least one message to a given one of the mobile user devices based on the location information;

wherein the location information for the given mobile user device comprises a probability that said device will be within a particular geographic area at a particular time; and

wherein the separating, obtaining and controlling steps are performed by at least one processing device having a processor coupled to a memory.

THE REJECTION

The following rejection is before us for review:

Claims 1–12 and 14–20 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence¹.

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellants argue that the rejection of claim 1 is improper because the claim is not directed to an abstract idea and is not a fundamental economic practice, a method of organizing human activities, an idea in itself, or a math formula (App. Br. 11–16). The Appellants even assuming *arguendo* that the claims are directed to an abstract idea that the “claims add significantly more than the alleged abstract idea” and “transform” the nature of the claim into patent-eligible subject matter (App. Br. 18–20).

In contrast, the Examiner has determined that the rejection of record is proper (Final Act. 2–7; Ans. 2, 3).

We agree with the Examiner. 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 an implicit exception: “laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-

¹ *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

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. If so, we then consider the elements of the 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 of the abstract idea. *Id.* 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 Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.* at 2358.

Here, we determine that the claim is directed to the concept of providing location based messaging to users based on the probability of their location. This is a method of organizing human activities and fundamental economic practice long prevalent in our system of commerce in messaging distribution and is an abstract idea beyond the scope of § 101. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) where collecting information, analyzing it, and displaying results from certain results of the collection and analysis was held to be an abstract idea. Also note that it has been held that “a process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible.” *See Digitech Image Techs, LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014).

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the

claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. The Specification at page 8, lines 19–22, describes operations with well-known wireless network elements. The Specification at page 10, lines 11–13, describes using standard computers or processing devices in the system. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. For these reasons, the rejection of claim 1 and its dependent claims, for which no specific arguments have been made, is sustained.

Method claim 8 and its dependent claims are directed to similar subject matter, and the rejection of these claims is sustained as well.

We reach the same conclusion as to system claims 14–20. Here, as in *Alice*, “the system claims are no different in substance from the method claims. 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.” *Alice* 134 S. Ct. at 2351. “[T]he 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.” *Id.* at 2358 (quoting *Mayo*, 132 S. Ct. at 1294).

Appeal 2016-003737
Application 11/437,157

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1–12 and 14–20 under 35 U.S.C. § 101.

DECISION

The Examiner’s rejection of claims 1–12 and 14–20 is sustained.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED