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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* PATRICK O’SULLIVAN

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Appeal 2016-004441<sup>1</sup>  
Application 11/318,972<sup>2</sup>  
Technology Center 3600

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Before ANTON W. FETTING, MEREDITH C. PETRAVICK, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s  
Final Rejection of claims 1–9 and 11–19. We have jurisdiction under  
35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed August 4, 2015) and Reply Brief (“Reply Br.,” filed March 25, 2016), the Examiner’s Answer (“Ans.,” mailed January 25, 2016), and Final Office Action (“Final Act.,” mailed March 12, 2015).

<sup>2</sup> Appellant identifies International Business Machines Corporation as the real party in interest (Appeal Br. 2).

### CLAIMED INVENTION

Appellant's claims relate to a method, system and computer program product for using an employee's presence awareness data to generate the employee's time card based upon the repeatedly collected presence awareness data. (Abs.).

Claims 1, 9, and 12 are the independent claims on appeal. Claim 1 reproduced below, with minor formatting changes and added bracketed notations, is illustrative of the subject matter on appeal:

1. A method for computing employee work patterns through presence and place awareness, the method comprising:
  - [a] initially setting a status of an employee to idle;
  - [b] repeatedly and concurrently collecting both presence and also place awareness data in place awareness logic executing in memory by a processor of a computing system by monitoring both presence and also place awareness data to detect an activity of the employee interacting with the computing system, detecting the activity for the employee, the activity including interaction with the computing system, determining whether the employee is idle, in response to determining that the employee is not idle, setting the status of the employee to active, in response to determining that the employee is idle, logging a time, a date, and an application the employee interacted with during the activity before becoming idle, determining that the employee is active upon determining that there is no activity by the employee, logging a time and also a date for the employee being active before the employee becoming idle; and,
  - [c] generating by the processor a time card for the employee based upon the repeatedly collected presence awareness data.

### REJECTIONS

Claims 1, 9, and 12 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 1–9 and 11–19 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 7, 9, 11, and 12 are rejected under 35 U.S.C. § 103(a) as unpatentable over McFarlane (US 2002/0111887 A1, pub. Aug. 15, 2002) and Skinner (US 6,622,116 B2, iss. Sept. 16, 2003).

Claims 2, 8, and 13 are rejected under 35 U.S.C. § 103(a) as unpatentable over McFarlane, Skinner, and Miller (US 2005/0171830 A1, pub. Aug. 4, 2005).

Claims 3–6 and 14–19 are rejected under 35 U.S.C. § 103(a) as unpatentable over McFarlane, Skinner, and DeHaas (US 2005/0108383 A1, pub. May 19, 2005).

## ANALYSIS

### *Indefiniteness*

Independent claim 1 recites, “initially setting a status of an employee to idle.” Independent claims 9 and 12 include a similar limitation. The Examiner rejects claims 1, 9, and 12 as indefinite because the Examiner finds “[t]he scope of ‘initially setting . . . ’ is unclear” (Final Act. 7). More particularly, the Examiner finds that “[i]nitially setting a status’ is a conditional based command wherein the system or the user must know the condition to perform the step of initially ‘setting,’” and as such, “it is unclear as to when the initial condition starts” (Ans. 14).

In response, Appellant points out that the Specification “explains how a ‘status of an employee can be set to idle as the employee will not yet have interacted with the host computing environment’” (Appeal Br. 7 (citing Spec. ¶ 21); *see also* Reply Br. 2)). In light of this disclosure, we agree with

Appellant that one of ordinary skill in the art would understand the limitation to refer to “setting the status of an employee after the employee logs into the computing system, but prior to the employee further interacting with the computing system” (Appeal Br. 7; *see also* Reply Br. 2).

In view of the foregoing, we do not sustain the Examiner’s rejection under 35 U.S.C. § 112(b), of claims 1, 9, and 12. *See Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (The test for definiteness under 35 U.S.C. § 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.”).

*Non-statutory subject matter*

Appellant argues claims 1–9 and 11–19 as a group (*see* Appeal Br. 7–15; *see also* Reply Br. 4–10). We select independent claim 1 as representative. Claims 2–9 and 11–19 stand or fall with independent claim 7. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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: “[l]aws 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).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories., Inc.*, 132 S. Ct. 1289, 1300 (2012), “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.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” *id.*, e.g., to an abstract idea. If the claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 132 S. Ct. at 1293. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Here, in rejecting the claims, the Examiner determined that independent claim 1 is “directed to the abstract idea of organizing human activities through fundamental economic practices i.e. categorizing users’ activity” (Final Act. 8; *see also* Ans. 14–15), and more particularly, directed to “the problem of monitoring employee’s work activity and use of employer’s resources” (Ans. 15). The Examiner further determined that independent claim 1 “require[s] the additional limitations of a processor, a memory and additional programs to perform the recited data collection, data storing and data categorization” (Final Act. 8).

In response, Appellant argues that the present “claims are not directed to an ‘abstract idea’” (Appeal Br. 8; *see also* Reply Br. 9–10); but rather, “directed to a specific way of doing something with a computer-electronically tracking employee work attendance through an employee computing workstation through presence and place awareness data” (Appeal Br. 11). Appellant also argues that the present claims are not directed to an abstract idea because they are “not simply directed to organizing human activity, fundamental economic principles, an idea of itself, or a mathematical relationship or formulas” (*see* Appeal Br. 12–14). We are not persuaded by Appellant’s arguments.

At the outset, we note that the Supreme Court in *Alice* did not rigidly define or otherwise restrict the universe of abstract ideas to one or more of: a building block of human ingenuity, a fundamental economic practice, and an algorithm. *See Alice*, 134 S. Ct. at 2357 (“we need not labor to delimit the precise counters of the ‘abstract ideas’ category”). And, here the Examiner does not find that the claims are directed to a fundamental economic practice, an idea of itself, or an algorithm. Furthermore, “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016).

Under step one of the framework set forth in *Alice*, we agree with the Examiner that the invention is broadly directed to “categorizing users’ activity” (Final Act. 8), and more particularly, directed to “monitoring employee’s work activity and use of employer’s resources” (Ans. 15). And based on our review of independent claim 1, we also agree with the Examiner that independent claim 1 involves nothing more than “storing, retrieving and processing data” (Appeal Br. 8) and is similar to the steps that

the Federal Circuit determined were patent ineligible in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016).

In *Electric Power*, the method claims at issue were directed to performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results. *Elec. Power Grp. LLC*, 830 F.3d at 1351–52. The Federal Circuit held that the claims were directed to an abstract idea, explaining that “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354. Here, we find independent claim 1 is directed to “[a] method for computing employee work patterns through presence and place awareness,” and includes steps for “initially setting a status of an employee to idle,” “collecting both presence and also place awareness data” in order “to detect an activity of the employee,” and then “generating . . . a time card for the employee based upon” the data. The claim also includes steps for “determining whether the employee is idle” or not idle based on whether or not there is employee activity using the collected data, and then logs this information.

Accordingly, we find that independent claim 1 involves nothing more than collecting and analyzing data, receiving and storing data, and generating a time sheet based upon the data, without any particular inventive technology — activities squarely within the realm of abstract ideas. *See, e.g., Elec. Power Grp., LLC*, 830 F.3d at 1353–54 (when “[t]he focus of the asserted claims” . . . “is on collecting information, analyzing it, and displaying certain results of the collection and analysis,” the claims are

directed to an abstract idea). *See also Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer” not patent eligible).

We are also unpersuaded by Appellant’s contention that the claimed invention is necessarily rooted in computer technology (Appeal Br. 11–12; *see also* Reply Br. 7–10). We first note that the claimed invention does not address a problem unique to the Internet or computer networks. *Cf. Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1371 (Fed. Cir. 2015) (“claims here do not address problems unique to the Internet, so *DDR* has no applicability”). Here, as the Examiner points out, Appellant’s

claims seek to address a problem that existed and continues to exist outside of the realm of the technology associated with the additionally recited elements – the problem of monitoring employee's work activity and use of employer's resources. The proposed solution is one that could have been implemented directly by an operator performing analogous functions by hand and/or with the assistance of a general purpose computer applied to facilitate the functions at a high level of generality or with the assistance of additional elements performing well-known, conventional functions.

(Ans. 15). We find the Examiner’s position to be supported by the Specification which identifies that its claimed invention allows an “employer [to] track the attendance record for employees without having to dedicate personnel to visually account for each employee during times of work” (Spec. ¶ 2). That is, it was known in the prior art to track employee

attendance records using dedicated personnel. Thus, we find the focus of independent claim 1 is not on any technological advancement, but rather on the performance of an abstract idea “for which computers are invoked merely as a tool.” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

We also are not persuaded by Appellant’s argument that “the claimed solution in the instant Application is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of tracking the actual presence of an employee in a working posture rather than merely tracking the proximity of the employee to the workplace” (Appeal Br. 12). More particularly, Appellant argues that “the innovative concept . . . of monitoring employee’s work activity and use of employer’s resources of Appellant[’s] claims are achieved by the complicated process and sub-process” recited by limitation [b] of independent claim 1 (Reply Br. 9–10).

In *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014), the Federal Circuit determined that the claims addressed the problem of retaining website visitors who, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be transported instantly away from a host’s website after clicking on an advertisement and activating a hyperlink. *DDR Holdings*, 773 F.3d at 1257. The Federal Circuit, thus, held that the claims were directed to statutory subject matter because they claim a solution “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.* In contrast, there is no indication here that the claimed invention requires something other than the normal, conventional

computer functions of receiving and analyzing data in order to generate results, i.e., time card. In this regard, we note that the Specification discloses broadly that “[p]resence and place awareness data 140 can be acquired whenever the employee computing users 110 interact with the computing applications 130” (Spec. ¶ 15). The Specification further discloses “[t]he client computing platform 210” includes “place awareness logic 250 can include program code enabled to publish the availability and willingness of the end user to communicate with other computing devices over the computer communications network 220” (*id.* ¶ 19). The Specification still further discloses

[t]he server computing platform 230 can include a data acquisition process 270 enabled to receive presence awareness data and place awareness data from the client computing platform 210 . . . . The data acquisition process 270 further can store the acquired presence awareness data and place awareness data in a data store 290. Finally, the server computing platform 230 can include a data reduction process 280. The data reduction process 280 can be enabled to process the presence awareness data and the place awareness data in the data store 290 to provide for strategic IT and HR management including accurate employee time card tracking beyond merely logging into and out of a network.

(*Id.* ¶ 20).

Unlike *DDR Holdings*, here, the solution comprises components of the claimed computing system, i.e., “client computing platform 210” in communication with “server computing platform 230” operating in their normal capacities to receive, process, and provide data. The Specification discloses that these components are generic (*see* Spec. ¶¶ 25–26; *see also* Fig. 2), without any particular inventive technology, to implement the abstract idea. Appellant does not direct attention to, and we do not see,

where the Specification provides for an improvement in the technology or technical functioning of these components. The claims recite an invention that is merely the routine or conventional use of the Internet to perform an abstract business practice. *DDR Holdings*, 773 F.3d at 1258–59.

Step two is “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*, 134 S.Ct. at 2355 (citing *Mayo*, 132 S.Ct. at 1294).

And, similar to the situation in *Electric Power*, we find nothing sufficient to remove the claims from the class of subject matter ineligible for patenting. As the court explained in *Electric Power*, “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Elec. Power Grp.*, 830 F.3d at 1355.

Here, as the Examiner points out, “[t]he additional elements or combination of elements in the claims other than the abstract idea per se amounts to no more than a mere instruction to implement the idea on a computer” (Final Act. 8). Appellant argues that “the innovative concept . . . of monitoring employee’s work activity and use of employer’s resources of Appellant[‘s] claims are achieved by the complicated process and sub-process” (Reply Br. 10) recited by limitation [b] of independent claim 1. However, as discussed above, we agree with the Examiner that independent claim 1 is directed broadly to “monitoring employee’s work activity and use of employer’s resources” (Ans. 15) including steps for setting a baseline, i.e., “initially setting a status,” collecting and analyzing

data, and presenting data, i.e., “generating . . . a time card”—none of which add inventiveness because they merely require the application of conventional, well-known analytical steps. *See Ultramercial, Inc.*, 772 F.3d at 716 (“[T]he claimed sequence of steps comprises only ‘conventional steps, specified at a high level of generality,’ which is insufficient to supply an ‘inventive concept.’”) (citing *Alice*, 134 S. Ct. at 2357). There is no indication in the record that any specialized computer hardware is required or evidence that the programming related to these “improvement[s]” would entail anything atypical from conventional programming. Instead, the Specification discloses utilizing conventional computer components (*see* Spec. ¶¶ 15, 18, 20, 25–26).

Appellant last argues that the present “claim language indicates how the innovative concept is achieved without foreclosing other ways of solving the problem solved by Appellant[’] claims” (Reply Br. 10 (emphasis omitted)). However, Appellant’s preemption argument does not alter our § 101 analysis. Preemption concerns are fully addressed and made moot where a patent’s claims are deemed to disclose patent ineligible subject matter under the two-part framework described in *Mayo* and *Alice*. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “While preemption may signal patent ineligible matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

In view of the foregoing, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of independent claim 1, and claims 2–9 and 11–19, which fall with independent claim 1.

*Obviousness*

We are persuaded by Appellant’s argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a), because Skinner, upon which the Examiner relies, does not disclose or suggest “initially setting a status of an employee to idle,” as recited by limitation [a] of independent claim 1, and similarly recited by independent claims 9 and 12 (*see* Appeal Br. 15–21; *see also* Reply Br. 10-15).

The Examiner maintains that the rejection is proper, and cites Skinner at column 17, lines 20–40, as well as Figure 13, as disclosing the argued limitation (*see* Final Act. 11; *see also* Ans. 17–18 (citing cols. 17–18, Figs. 14–15). More particularly, the Examiner finds that “idle status can be determined based on time lap[s] condition or depends on when the system start doing timeline tracking of employee’s activity (*id.*). In the Answer, the Examiner also appears to rely on McFarlane at paragraphs 36–41 (*see* Ans. 17–18). However, we agree with Appellant that there is nothing in the cited portions that discloses or suggests the argued limitation.

In making this determination, we note that Skinner is directed to a system “for automatically recording time and work performed on a computer by monitoring file activity and by monitoring various input devices” (Skinner, col. 1, ll. 24–26). Skinner discloses that its system includes “a data analyzer which provides for the exclusion of time where there is no activity on the computer” (*id.* at col. 2, l. 67 – col. 3, l. 1). More particularly, Skinner determines “active times” using the following logic:

Block **1302** starts a timing loop for each job. Block **1304** calculates the difference in time between activities. Block **1306** tests if the allowable idle time is exceeded to stop that stop watch. If not, the routine loops back to Block **1302** for another job. If

the idle time is exceeded, Block **1308** accumulates the job time. If it's time to stop that stop watch, then we accumulate the total time in Block **1310** and go back to do the next job. If it's not time to stop the stop watch, we go on to the next task. All tasks are looked at to determine if there's any activity. If any files are updated, Block **1312** writes the data out to the file.

(*Id.* at col. 17, ll. 20–32). Skinner further discloses “[i]f one imagines each “start” as the detection of activity for a certain task” (*id.* at col. 18, ll. 31–32). Additionally, Figure 14 of Skinner depicts “an illustrative timing diagram illustrating starting, restarting, and ending of an analyzer time for a task,” where for example, “[a]t time a, the timer is started” (*id.* at col. 18, ll. 12–14, 22).

We also note that McFarlane is directed to “an employee monitoring system that provides convenient and detailed reporting on the online activity of employees, such as employee Internet, e-mail (in/out) and dial-in activity, in a manner that corresponds to the particular organizational structure of the company” (McFarlane ¶ 1). McFarlane discloses “log files **28** are generated which provide detailed information on all activity passing through the firewall **20**,” e.g., “Internet, e-mail (sent and received) and dial-in activity for all persons having authorized access to the company computers” (*id.* ¶ 22). McFarlane’s system generates summary reports which show usage information (*id.* ¶¶ 11, 23–26). McFarlane further discloses that the summary reports also include links to more detailed information which can provide, e.g., “the number of times the employee dialed into the company computer using remote dial-in/out services” and the number of inbound and outbound emails (*id.* ¶¶ 31–34; *see also* Tables 1–3).

We have reviewed the cited portions of Skinner, in view of McFarlane, and agree with Appellant that none of the cited portions of

Skinner or McFarlane discloses or suggests the argued limitation. Instead, we agree with Appellant that the “Examiner’s analysis incorporates the ‘setting’ limitation with a limitation directed to ‘determining whether the employee is idle’” (Appeal Br. 20). Thus, we agree with Appellant that the combination of Skinner and McFarlane fails to disclose or suggest “initially setting a status of an employee to idle,” as recited by limitation [a].

Responding to Appellant’s argument in the Response to Argument section of the Answer, the Examiner takes the position

McFarlane demonstrated the mechanism for logging time, date and application the employee was interacting with at any time (at least ¶ 36–41). Although McFarlane does not explicitly teach the triggering condition (i.e. in response to determine a particular employee is idle), Skinner shows that it is obvious to record activities after determination of an idle status (col. 17–18 and fig. 15 i.e. the system constantly tracks the time laps to determine employee’s idle status.

(Ans. 17).

The difficulty with the Examiner’s reasoning is that limitation [a] does not merely require “determining whether the employee is idle,” as recited by limitation [b]; but rather requires “initially setting a status of an employee to idle” prior to making such a determination. Although we agree with the Examiner that Skinner’s data analyzer determines whether or not there is activity for a certain task (Skinner, col. 17, ll. 20–32, col. 18, ll. 31–32), we cannot agree with the Examiner that Skinner “initially set[s] a status of an employee to idle,” as independent claims 1, 9, and 12 require. Instead, we agree with Appellant that “Skinner only relates to the detection of when a job or task is idle and starting and stopping a timer based upon that determination” (Reply Br. 15). Thus, we fail to see, and the Examiner does not adequately explain how Skinner’s ability to detect activity for a certain

job or task discloses or suggests “initially setting a status of an employee to idle,” as required by independent claims 1, 9, and 12. The addition of McFarlane’s “mechanism for logging time, date and application the employee was interacting with at any time” (Ans. 17 (citing McFarlane ¶¶ 36–41)) does not cure this deficiency.

In view of the foregoing, we do not sustain the Examiner’s rejection of independent claims 1, 9, and 12 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the Examiner’s rejections of claims 2–8, 11, and 13–19, which depend therefrom.

#### DECISION

The Examiner’s rejection of claims 1, 9, and 12 under 35 U.S.C. § 112, second paragraph, is reversed.

The Examiner’s rejection of claims 1–9 and 11–19 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejections of claims 1–9 and 11–19 under 35 U.S.C. § 103(a) are reversed.

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