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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* ANTHONY DEBARGE, CELINE MIOLAND,  
SOPHIE RABBE, PHILLIPE LAROSA, and MOURAD BOUDIA

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Appeal 2016-004654  
Application 12/895,852  
Technology Center 3600

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Before JUSTIN BUSCH, TERRENCE W. McMILLIN, and  
NORMAN H. BEAMER, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 4–6, 10, 11, 13, and 15–29, which are all the pending claims. Claims 2, 3, 7–9, 12, and 14 were previously cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims relate generally to floating reservations of resources. Spec. 1:10–13. More specifically, the claims are directed to systems and methods for temporarily reserving resources based on certain criteria and

modifying the temporary reservations based on a later request for a temporarily reserved resource. *Id.* at 10:6–16, Fig. 5. Claim 1 is reproduced below:

1. A method for managing a plurality of resources each characterized by criteria, the resources being classified by the criteria into a plurality of groups, each group characterized by one criterion of the criteria so that each resource belongs to multiple groups, the method comprising:

maintaining, in a repository coupled with a server, an availability for each of the resources for a plurality of time units;

defining within the repository a first group of resources comprising a first criterion, the first group including a first resource and a second resource;

defining within the repository a second group of the resources comprising a second criterion, the second group including the first resource so that the first group and the second group overlap with respect to the first resource;

receiving a first booking request at the server to book a resource with availability over a first time period comprising the time units, the first booking request comprising a first mandatory criterion that matches the first criterion;

in response to receiving the first booking request, assigning at the server a first temporary booking over the first time period to the first resource;

receiving at the server an availability query, the availability query comprising a second time period that overlaps with the first time period and a second mandatory criterion that matches the second criterion; and

in response to the server receiving the availability query, moving, by the server, the first temporary booking on at least one of the time units of the second time period from the first resource to the second resource to free availability of the first resource in the second group for responding to the availability query.

## REJECTIONS

Claims 1, 4–6, 10, 11, 13, and 15–29 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Non-Final Act. 3–4.

Claims 1, 11, and 13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Non-Final Act. 4–5.

Claims 1, 4, 6, 10, 11, 13, and 15–29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Miyashita (US 2007/0271123 A1; Nov. 22, 2007).<sup>1</sup> Non-Final Act. 5–8.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being obvious in view of Miyashita and Rayner (US 2010/0198628 A1; Aug. 5, 2010). Non-Final Act. 9.

## ANALYSIS

### REJECTION OF CLAIMS UNDER 35 U.S.C. § 101

#### *Introduction and Framework*

The Examiner rejects the claims under 35 U.S.C. § 101 because the claims as a whole are directed to an abstract idea and do not contain “significantly more than the abstract idea” so as to transform the claimed abstract idea into a patent-eligible application. Non-Final Act. 2–3; Ans. 4–7.

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<sup>1</sup> The statement of rejection identifies claims 7–9 in this ground. Non-Final Act. 5. However, claims 7–9 were previously cancelled. The statement of rejection fails to identify claims 15–29 in this ground. *Id.* Nevertheless, the Examiner provides a mapping and explanation of the rejection of claims 15–29 as anticipated by Miyashita. Non-Final Act. 7–8. We deem these errors harmless.

The Patent Act defines patent-eligible subject matter broadly: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. There is no dispute in this Appeal that the pending claims are directed to one of these categories. *See* App. Br. 8; Ans. 4.

In *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 70 (2012), and *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347, 2354 (2014), the Supreme Court explained that § 101 “contains an important implicit exception” for laws of nature, natural phenomena, and abstract ideas. *See Diamond v. Diehr*, 450 U.S. 175, 185 (1981). In *Mayo* and *Alice*, the Court set forth a two-step analytical framework for evaluating patent-eligible subject matter: (1) “determine whether the claims at issue are directed to” a patent-ineligible concept, such as an abstract idea; and, if so, (2) “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements” add enough to transform the “nature of the claim” into “significantly more” than a patent-ineligible concept. *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79); *see Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Step one in the *Mayo/Alice* framework involves looking at the “focus” of the claims at issue and their “character as a whole.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Step two involves the search for an “inventive concept.” *Alice*, 134 S. Ct. at 2355; *Elec. Power Grp.*, 830 F.3d at 1353. For an inventive concept, “more is

required than ‘well-understood, routine, conventional activity already engaged in’” by the relevant community. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016) (quoting *Mayo*, 566 U.S. at 79–80).

*Prima Facie Case*

Appellants contend the Examiner has not established a prima facie case of patent ineligibility under 35 U.S.C. § 101 because the Examiner provides no evidentiary support and the Examiner’s findings violate the substantial evidence standard. App. Br. 10–11; Reply Br. 2.

Appellants’ arguments do not persuade us of error. The Federal Circuit has repeatedly explained that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The “PTO [(Patent and Trademark Office)] carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in ‘notify[ing] the applicant . . . [by] stating the reasons for [its] rejection, or objection or requirement, 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) (quoting 35 U.S.C. § 132) (alterations in original). The PTO violates § 132 “when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990). But if the PTO “adequately explain[s] the shortcomings it perceives . . . the burden shifts to the applicant

to rebut the prima facie case with evidence and/or argument.” *Hyatt*, 492 F.3d at 1370.

The Non-Final Office Action adequately explains the § 101 rejection. The claims, as a whole are directed to managing resources, which is a method of organizing human activities and an idea of itself. Non-Final Act. 4. The Examiner explains that the claims are similar to judicially noted exceptions for abstract ideas related to collecting, recognizing, and storing data; organizing, storing, and transmitting information; and comparing new and stored information and using rules to identify options. Ans. 3. The Examiner further determines the:

additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claim amounts to significantly more than: [(i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.

Non-Final Act. 4. The Examiner’s statements satisfy § 132 because they apply the *Mayo/Alice* two-step analytical framework and apprise Appellants of the reasons for the § 101 rejection under that analysis. As discussed in more detail below, Appellants recognize the Examiner’s *Mayo/Alice* analysis and present arguments regarding each step. *See* App. Br. 10–13.

*Step One of Alice Framework*

Turning to step one of the *Alice* framework, we are unpersuaded the Examiner erred in concluding the claims are directed to an abstract idea. Non-Final Act. 2; Ans. 4. Appellants’ only arguments with respect to step one are that the Examiner has not made a prima facie case and the

Examiner's findings violate the substantial evidence standard. App. Br. 10–11; Reply Br. 2.

Appellants' contention concerning the absence of evidence supporting the § 101 rejection does not persuade us of Examiner error. "Patent eligibility under § 101 presents an issue of law." *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1340 (Fed. Cir. 2013). There is no requirement that an examiner cite evidentiary support to conclude that a claim is directed to a patent-ineligible concept, such as an abstract idea. The "July 2015 Update: Subject Matter Eligibility" ("2015 Update") notes that "courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings." 2015 Update 6. Further, the 2015 Update instructs that a § 101 rejection may rest on "the knowledge generally available to those in the art, on the case law precedent, on applicant's own disclosure, or on evidence." *Id.*

As discussed above, Appellants' argument that the Examiner has failed to establish a prima face case of ineligibility is similarly unpersuasive. To reiterate, the Examiner finds the claims are directed to managing resources, which are an idea of itself (i.e., steps that could be performed mentally by a human) and are methods of organizing human activities. Non-Final Act. 4; Ans. 3. The Examiner explains that the claims are similar to judicially noted exceptions for abstract ideas related to collecting, recognizing, and storing data; organizing, storing, and transmitting information; and comparing new and stored information and using rules to identify options. Ans. 3. Notably, the Examiner's characterization is consistent with Appellants' description of the problem and solution. *See*



Spec. 1:10–11 (“The present invention relates . . . to a method and system for a floating inventory of resources”).

The claims are similar to claims the Federal Circuit has found to be directed to an abstract idea. In determining whether claims are directed to an abstract idea, the Federal Circuit has considered whether the claims cover a method that human beings can perform without a computer. *See Mortgage Grader, Inc. v. First Choice Loan Servs.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (explaining “[t]he series of steps covered by the asserted claims . . . could all be performed by humans without a computer” in concluding that the claims are directed to an abstract idea). Appellants’ claims broadly and abstractly recite a series of determinations and communications that a human can make by reviewing relevant resource availability records.

The claims recite processes or methods implemented by processors that receive a resource reservation request, compare the request to an existing reservation and resource data to recognize whether the existing reservation should be altered to utilize different resources. The Federal Circuit has also recognized that “[t]he concept of data collection, recognition, and storage is undisputedly well-known,” and “humans have always performed these functions.” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). We agree with the Examiner’s findings because the claimed concept is similar to the above-discussed concepts found to be abstract by the Federal Circuit.

Accordingly, we are unpersuaded the Examiner erred in concluding the claims are directed to an abstract idea.

*Step Two of Alice Framework*

Because the claims are “directed to an abstract idea,” we turn to step two of *Alice* to determine whether the limitations, when considered both “individually and ‘as an ordered combination’” contain an “inventive concept” sufficient to transform the claimed “abstract idea” into a patent-eligible application. *Alice*, 134 S. Ct. at 2355–58.

Appellants contend “the claims recite additional elements that amount to significantly more than a method of ‘managing resources’ [and] the claims do not ‘risk disproportionately tying up the use of the underlying ideas’ and ‘pose no comparable risk of pre-emption.’” App. Br. 11–13. We disagree.

Appellants paraphrase the recited limitations and argue “[t]he claims recite ‘significantly more’ than the alleged abstract concept of ‘managing resources’ itself because they recite an inventive concept.” App. Br. 11–12. Appellants then contend the inventive concept of an exemplary hotel room reservation disclosed in the Specification is that the booking can “float” between room types. App. Br. 12 (citing Spec. 15:24–28, 15:31–16:5).

First, we consider the limitations individually. *See Alice*, 134 S. Ct. at 2355–58. The claims recite conventional uses of computers (a server) and databases (a repository) to communicate booking requests and reserving availability of resources in the database. To perform these functions, the claims do not call for non-conventional computer components. Rather, we agree with the Examiner that these functions “generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent

industry.” Ans. 3. Thus, the limitations, considered individually, do not contain an inventive concept.

Next, we consider the limitations as an ordered combination. Appellants’ argument that the hotel booking involves an inventive concept is unpersuasive. Essentially, the claim recites an abstract idea of a particular method of managing reservations with the instruction to apply it on generic computing components. “[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701 (2015). So, even if a computer performs the claimed steps and ultimate scheduling with fewer errors or more quickly than a human, we agree with the Examiner that using a computer in this conventional way does not supply an inventive concept. Ans. 3.

Appellants also argue the claims do not pre-empt any abstract idea because they do not pre-empt even the closest prior art. App. Br. 12–13. It is true that the Supreme Court has characterized pre-emption as a driving concern for patent eligibility. *See Alice*, 134 S. Ct. at 2354. However, characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent 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). However, “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption

does not demonstrate patent eligibility.” *Ariosa*, 788 F.3d at 1379; *Cf. OIP Techs*, 788 F.3d at 1362–63 (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

For the above reasons, Appellants have not persuaded us of error in the rejection of the claims under 35 U.S.C. § 101.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Examiner rejects claims 1, 11, and 13 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and claim the subject matter to which Appellants believe they are entitled. Non-Final Act. 4–5. In particular, the Examiner finds “defining within the repository a second group of the resources comprising a second criterion, the second group including the first resource so that the first group and the second group overlap with respect to the first resource,” recited in independent claim 1 and commensurately recited in independent claims 11 and 13, is unclear. Non-Final Act. 5. The Examiner further states “it appears as though the overlapping occurs between the criterion as opposed to the resources” and that the delineation between resources, groups, and criteria is unclear. Ans. 4.

Appellants contend the plain meaning of the claim language is clear. App. Br. 14. Specifically, Appellants argue “[t]he overlapping of the groups with respect to the first resource clearly describes a requirement that the first resource be included in both the first group and the second group.” *Id.* (citing Spec., Figs. 4, 6–8).

We agree with Appellants. The claims clearly indicate the recited overlap means that the first resource is present in both the first and second

groups. Moreover, the claims, on their face, also clearly distinguish between groups, resources, and criteria. The Examiner provides no further explanation regarding the apparent lack of clarity or confusion. Based on this record, we agree with Appellants that the Examiner erred in rejecting claims 1, 11, and 13 under 35 U.S.C. § 112, second paragraph.

REJECTION OF CLAIMS UNDER 35 U.S.C. §§ 102 AND 103

The Examiner rejects claims 1, 4, 6, 10, 11, 13, and 15–29 under 35 U.S.C. § 102(b) as anticipated by Miyashita and claim 5 under 35 U.S.C. § 103(a) as being obvious in view of Miyashita and Rayner. Non-Final Act. 5–9. The Examiner relies on Rayner solely for teaching or suggesting “wherein the trigger event includes an administrator input.” Non-Final Act. 9. Of particular relevance to Appellants’ arguments, the Examiner finds Miyashita discloses “defining within the repository a first group of resources comprising a first criterion, the first group including a first resource and a second resource,” and “defining within the repository a second group of the resources comprising a second criterion, the second group including the first resource so that the first group and the second group overlap with respect to the first resource,” as recited in claim 1 and commensurately recited in claims 11 and 13. Non-Final Act. 6 (citing Miyashita ¶¶ 66, 82–83).

Appellants contend Miyashita fails to disclose the defining groups limitations. App. Br. 15–17; Reply Br. 4. Specifically, Appellants argue the cited portions of Miyashita disclose reservation alternative fields that list alternative products, but fail to disclose defining groups having a particular criterion, let alone defining groups such that a resource having the criterion from the first group and the criterion from the second group will be in both

the first and second groups. App. Br. 16–17. Appellants further assert Miyashita’s reservation data and unreserved product data do not overlap (i.e., the data is one of “fixedly reserved,” “provisionally reserved,” reserved as a backup,” or “unreserved”) and, because products are assigned based on status rather than criteria, Miyashita’s data structure does not disclose defining groups comprising a criterion. App. Br. 17 (citing Miyashita ¶¶ 74–75). Finally, Appellants contend “merely disclosing that more than one room in a hotel can satisfy the same reservation criterion fails to disclose” the defining groups limitations. Reply Br. 4.

We agree with the Examiner that Miyashita teaches room characteristics (e.g., non-smoking room) are criteria associated with resources that may be prioritized, affect the reservation process, and be the same among different resources. *See* Ans. 4–5. However, the claims require *defining groups* of resources comprising certain criteria. Although Miyashita discloses various resources having certain criteria, the Examiner has not shown that Miyashita discloses defining a first group having a first criterion and a second group having a second criterion. Therefore, we are persuaded by Appellants’ argument that the Examiner erred in finding Miyashita discloses defining groups having a criterion.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Constrained by this record, therefore, we do not sustain the Examiner’s anticipation rejection of claim 1, 4, 6, 10, 11, 13, and 15–29. The Examiner’s rejection of claim 5 as obvious in view of the combination of Miyashita and Rayner does not rely on Rayner or provide any additional

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rationale for modifying Miyashita to overcome the above-identified deficiency. Accordingly, on this record, we do not sustain the Examiner's obviousness rejection of claim 5.

#### SUMMARY

We sustain the Examiner's rejection of claims 1, 4–6, 10, 11, 13, and 15–29 under 35 U.S.C. § 101. We do not sustain the Examiner's rejection of claims 1, 11, and 13 under 35 U.S.C. § 112, second paragraph. We do not sustain the Examiner's rejection of claims 1, 4, 6, 10, 11, 13, and 15–29 under 35 U.S.C. § 102(b) or the Examiner's rejection of claim 5 under 35 U.S.C. § 103(a).

#### DECISION

We affirm the Examiner's rejection of claims 1, 4–6, 10, 11, 13, and 15–29.

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