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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/181,444	02/14/2014	Raghu Lakkapragada	AM2-0044USC1	1227
136607	7590	04/02/2018	EXAMINER	
Lee & Hayes PLLC 601 West Riverside Avenue Suite 1400 Spokane, WA 99201			CHANG, EDWARD	
			ART UNIT	PAPER NUMBER
			3696	
			NOTIFICATION DATE	DELIVERY MODE
			04/02/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAGHU LAKKAPRAGADA, JEYANDRAN VENUGOPAL, and
JEFFREY GORDON LAWSON

Appeal 2016-004943
Application 14/181,444¹
Technology Center 3600

Before ANTON W. FETTING, BRUCE T. WIEDER, and
AMEE A. SHAH, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 21–40. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Amazon Technologies, Inc. (Appeal Br. 3.)

CLAIMED SUBJECT MATTER

Appellants' claimed invention relates to "authorizing or enabling authorization of multiple payment transactions without requiring that a buyer or seller authorize each transaction separately." (Spec. ¶ 5.)

Claims 21, 27, and 32 are the independent claims on appeal. Claim 21 (Appeal Br. 40) is illustrative and recites:

21. A method comprising:
 - enabling via a device associated with a user a selection of at least one of an aggregate price or an aggregate quantity of transactions for a set of multiple payment transactions;
 - receiving from the device associated with the user an indication of the selection of at least one of the aggregate price or the aggregate quantity;
 - building a unique identifier that is based at least in part on one of the selected aggregate price or the selected aggregate quantity;
 - providing the unique identifier to the device associated with the user to enable automatic payment transaction authorization according to at least one of the aggregate price or the aggregate quantity associated with the unique identifier;
 - receiving a request to authorize a payment transaction and the unique identifier for authorizing the payment transaction from the device associated with the user; and
 - automatically authorizing the payment transaction using the unique identifier based on at least one of the aggregate price or the aggregate quantity.

REJECTION²

Claims 21–40 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

² The rejection of claims 21–40 under 35 U.S.C. § 112, second paragraph, was withdrawn. *See Answer 2.*

ANALYSIS

In 2014, the Supreme Court decided *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). *Alice* applies a two-step framework, earlier set out in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (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*, 134 S. Ct. at 2355.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* If the claims are determined to be directed to a patent-ineligible concept, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 2357 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, the Examiner determines that “[t]he claim(s) is/are directed to a fundamental economic practice and the abstract idea of organizing human activities.” (Final Action 4, *see also* Answer 2.)

Appellants disagree and argue that

claim 21 is directed toward building a unique identifier based on an indication of selection of at least one of an aggregate price or aggregate quantity of transactions for a set of multiple transactions received from a device, and providing the unique identifier to the device such that a payment transaction can be automatically authorized for the device using the unique identifier.

(Appeal Br. 15.)

Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). Thus, although we consider the claim as a whole, the “directed to” inquiry focuses on the claim’s “character as a whole.”

The Specification provides evidence as to what the claimed invention is directed. In this case, the Specification discloses that the invention relates to “authorizing or enabling authorization of multiple payment transactions without requiring that a buyer or seller authorize each transaction separately.” (Spec. ¶ 5.) Claim 21 recites “enabling . . . a selection of . . . an aggregate price or an aggregate quantity of transactions,” “receiving . . . an indication of the selection,” “building a unique identifier . . . based at least in part on one of the selected aggregate price or the selected aggregate quantity,” “providing . . . the unique identifier to . . . the user,” “receiving a request to authorize a payment transaction and the unique identifier,” “and automatically authorizing the payment transaction using the unique identifier.” (Appeal Br. 40.) As such, the claimed invention is directed to receiving, building, and providing data to authorize payment transactions.

Although we and the Examiner describe, at different levels of abstraction, to what the claims are directed, it is recognized that “[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). That need not and, in this case does not, “impact the patentability analysis.” *See id.* at 1241.

In this case, as in *Alice*, we need not labor to delimit the precise contours of the “abstract ideas” category. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of “creat[ing] electronic records, track[ing] multiple transactions, and issu[ing] simultaneous instructions,” *Alice*, 134 S. Ct. at 2359, and receiving request data, creating/building identifier data, and providing the identifier data to authorize the payment/issue an instruction. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice*, 134 S. Ct. at 2357; *see also Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting, analyzing and displaying information of a specific content is an abstract idea).

Appellants seek to analogize claim 21 to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). Appellants argue that, like *DDR Holdings*, “claim 21 is inextricably tied to computer technology.” Specifically, Appellants argue that “claim 21 is directed toward building a unique identifier based on an indication of selection of at least one of an aggregate price or aggregate quantity of transactions for a set of multiple transactions received from a device” (Appeal Br. 14.) But the step of “building a unique identifier” does not recite use of computer technology. Regardless, Appellants do not persuasively argue why “building a unique identifier,” e.g., an account number in a line of credit, is inextricably tied to computer technology.

Therefore, we do not find this argument persuasive of error.

Appellants further seek to analogize claim 21 to those in *DDR Holdings* by arguing that the step of “providing the unique identifier to the device such that a payment transaction can be automatically authorized for

the device using the unique identifier” is also inextricably tied to computer technology. (*Id.*) However, unlike claim 21, the claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258 (emphasis added). In other words, the invention claimed in *DDR Holdings* does more than “simply instruct the practitioner to implement the abstract idea with routine, conventional activity.” *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *see also DDR Holdings*, 773 F.3d at 1259. Appellants do not persuasively argue how providing a unique identifier “overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258.

Appellants further argue that claim 21 does not preempt “the abstract idea of ‘allowing consumers to shop for and optionally purchase merchandise,’ as alleged by the Office.” (Appeal Br. 17.) We do not find this preemption argument persuasive of error.

Preemption is not a separate test.

To be clear, the proper focus is not preemption *per se*, for some measure of preemption is intrinsic in the statutory right granted with every patent to exclude competitors, for a limited time, from practicing the claimed invention. *See* 35 U.S.C. § 154. Rather, the animating concern is that claims should not be coextensive with a natural law, natural phenomenon, or abstract idea; a patent-eligible claim must include one or more substantive limitations that, in the words of the Supreme Court, add “significantly more” to the basic principle, with the result that the claim covers significantly *less*. *See Mayo* 132 S. Ct. at 1294 [566 U.S. at 72–73].

CLS Bank Int'l v. Alice Corp. Pty. Ltd., 717 F.3d 1269, 1281 (Fed. Cir. 2013) (Lourie, J., concurring), *aff'd*, 134 S. Ct. 2347 (2014). Moreover, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). In other words, “preemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

In view of the above, we are not persuaded that the Examiner erred in determining that claim 21 is directed to an abstract idea.

Step two of the *Alice* framework has been described “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*, 134 S. Ct. at 2355 (citing *Mayo*, 566 U.S. at 72–73).

Appellants argue that “claim 21 includes an improvement in the technology and/or technical field of processing transactions.” (Appeal Br. 28.) Specifically, Appellants argue that “claim 21 includes a highly efficient and effective process for both buyers and sellers to conduct transactions over the Internet.” (*Id.*)

As an initial matter, claim 21 does not recite use of the Internet. Thus, Appellants’ argument is not commensurate with the scope of the claim and is not persuasive of error. Nor does claim 21 recite any particular technology. Rather, claim 21 merely recites “a device associated with a user.” (Claim 1.) Additionally, as noted above, the step of “building a

unique identifier” does not even require use of a device. The step may be performed by hand. In short, Appellants do not persuasively argue how the claimed invention improves a technology. Moreover, the Specification discloses use of conventional computers. (*See Spec. § 15.*) Using a conventional device, even a conventional computer, to perform an abstract business practice does not make a claim patent-eligible. *See DDR Holdings*, 773 F.3d at 1256.

Considered as an ordered combination, the device of Appellants’ method adds nothing that is not already present when the steps are considered separately. The claim does not, for example, purport to improve the functioning of the device. Nor does it effect an improvement in any other technology or technical field. Instead, the claim at issue amounts to nothing significantly more than an instruction to transmit and receive information using the generic device. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Appellants further argues “that claim 21 is analogous to claim 2 of Example 21 from the *Updated Guidance*.” (Appeal Br. 30.) We disagree.

In relevant part, claim 2 in Example 21 recites “[a] method of distributing stock quotes over a network to a remote subscriber computer” including the steps of

transmit[ing] the formatted stock quote alert over a wireless communication channel to a wireless device associated with a subscriber based upon the destination address and transmission schedule,

wherein the alert activates the stock viewer application to cause the stock quote alert to display on the remote subscriber computer and to enable connection via the URL to the data source over the Internet when the wireless device is locally

Appeal 2016-004943
Application 14/181,444

connected to the remote subscriber computer and the remote subscriber computer comes online.

July 2015 Update Appendix 1: Examples, 3 (2015),

<https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-app1.pdf>;

2014 Interim Guidance on Subject Matter Eligibility (2014 IEG), *July 2015*

Update: Subject Matter Eligibility, 79 Fed. Reg. 74618 (Dec. 16, 2014).

The Update Appendix explains that

[t]he claimed invention addresses the Internet-centric challenge of alerting a subscriber with time sensitive information when the subscriber's computer is offline. This is addressed by transmitting the alert over a wireless communication channel to activate the stock viewer application, which causes the alert to display and enables the connection of the remote subscriber computer to the data source over the Internet when the remote subscriber computer comes online.

(*Id.* at 4.)

Example 1 of the Update is similar to Example 2 except that Example 1 lacks the stock viewer application; and, thus, does not address “the Internet-centric challenge of alerting a subscriber . . . when the subscriber's computer is offline.” Example 1 is described as patent ineligible. Appellants do not argue what step(s) of claim 21 is/are analogous to the stock viewer application of Example 2. Nor do Appellants argue why claim 21 is more analogous to Example 2 than to Example 1. We do not find Appellants' arguments persuasive of error.

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 21 under § 101. Appellants make similar arguments for independent claims 27 and 32, which contain similar language. (*See Appeal Br. 18–25, 32–38.*) For similar reasons, we are not persuaded that the Examiner erred in rejecting independent claims 27 and 32. Dependent

Appeal 2016-004943
Application 14/181,444

claims 22–26, 28–31, and 33–40 are not separately argued and fall with their respective independent claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

The Examiner’s rejection of claims 21–40 under 35 U.S.C. § 101 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)(1)(iv).

AFFIRMED