



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.
13/475,377	05/18/2012	Jeffrey M. Stibel	384.9559USU	7685
27623	7590	06/29/2018	EXAMINER	
OHLANDT, GREELEY, RUGGIERO & PERLE, LLP ONE LANDMARK SQUARE, 10TH FLOOR STAMFORD, CT 06901 UNITED STATES OF AMERICA			FU, HAO	
			ART UNIT	PAPER NUMBER
			3697	
			MAIL DATE	DELIVERY MODE
			06/29/2018	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 JEFFERY M. STIBEL, AARON B. STIBEL,
JUDITH GENTILE HACKETT, MOUJAN KAZERANI, and
JEREMY LOEB

Appeal 2016-005011
Application 13/475,377¹
Technology Center 3600

Before NINA L. MEDLOCK, BRADLEY B. BAYAT, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1–4, 6, 9, 10, 13–15, 17, 18, 20, 21, and 23–28, which are all the pending claims in the application. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The Appellants identify “Credibility Corp.” as the real party in interest. Appeal Brief (“App. Br.,” filed Sept. 24, 2015) 1.

STATEMENT OF THE CASE

Claimed Invention

This “invention pertains to a system, methods, and software products for determining credit availability and creditworthiness.” Spec. ¶ 2.

Claims 1, 13, and 20 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter and recites:

1. A computer-implemented method for facilitating the acquisition of credit by accurately presenting credit that is available to a particular credit seeker from a plurality of credit providers without the particular credit seeker preparing a credit application for submission to any of the plurality of credit providers, the computer-implemented method composing:
 - providing prequalified leads to the plurality of credit providers in exchange for aggregating a plurality of credit origination data from the plurality of credit providers, the plurality of credit origination data comprising amounts and terms of credit the plurality of credit providers have extended to a plurality of credit seekers and a credit score of each of the plurality of credit seekers, wherein the plurality of credit seekers excludes the particular credit seeker;
 - receiving identification information for the particular credit seeker;
 - matching the identification information to a particular database record of a plurality of database records, the particular database record comprising (i) verified information that matches to the identification information and (ii) verified information that is not provided as part of the identification information and is usable to obtain a credit score of the particular credit seeker;
 - obtaining a credit score for the particular credit seeker based on the verified information from the particular database record;
 - extracting from the aggregated credit origination data, a subset of credit origination data involving a subset of the plurality of credit seekers having credit scores within an upper

bound and a lower bound of the credit score obtained for the particular credit seeker;

presenting from the subset of credit origination data, amounts and terms of credit the particular credit seeker is prequalified to receive from the subset of credit seekers without passing any information about the particular credit seeker to the subset of credit providers, wherein said presenting comprises presenting in a graphical user interface, (i) a first graphical element displaying amounts and terms for a first line of credit the particular credit seeker is prequalified to receive from a first credit provider of the subset of credit providers and (ii) a second graphical element displaying amounts and terms for a second line of credit the particular credit seeker is prequalified to receive from a second credit provider of the subset of credit providers.

App. Br. 31–32 (Claims App.).

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Green	US 2003/0009418 A1	Jan. 9, 2003
Turbeville	US 2004/0024692 A1	Feb. 5, 2004
Greenwood	US 2004/0267660 A1	Dec. 30, 2004
Guy	US 2005/0154664 A1	July 14, 2005
Graham	US 2011/0166986 A1	July 7, 2011
Bennett	US 8,036,941 B2	Oct. 11, 2011
Hallman	US 8,055,578 B1	Nov. 8, 2011

Rejections on Appeal

The following rejections are before us for review:

- I. Claims 1–4, 6, 9, 10, 13–15, 17, 18, 20, 21, and 23–28 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.
- II. Claims 1–4, 6, 20, 21, and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett in view of Guy and Graham.
- III. Claims 9 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett in view of Guy, Graham, and Turbeville.
- IV. Claims 13, 14, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett in view of Greenwood, Hallman, and Graham.
- V. Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett in view of Greenwood, Hallman, Graham, and Green.
- VI. Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett in view of Greenwood, Hallman, Graham, and Turbeville.
- VII. Claims 23–27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett in view of Guy, Graham, and Hallman.

ANALYSIS

Rejection I—Non-Statutory Subject Matter

Section 35 U.S.C. § 101 defines patent-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter, or

Appeal 2016-005011
Application 13/475,377

any new and useful improvement thereof,” subject to the other limitations of the Patent Act. 35 U.S.C. § 101. Apart from the Patent Act, the Supreme Court has created exceptions to the literal scope of 35 U.S.C. § 101. “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)).

In *Alice*, the Court reaffirmed a two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), for analyzing whether a claim is patent eligible. *Alice*, 134 S. Ct. at 2355. The first step in that framework is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* The “directed to” inquiry applies a stage-one filter to the claims, considered in light of the Specification, based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). If so, the inquiry proceeds to step two to look at the claim for “something more” by “examin[ing] the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2354, 2357 (quoting *Mayo*, 566 U.S. at 66, 79). This inventive concept must do more than simply recite “well-understood, routine, conventional activity.” *Mayo*, 566 U.S. at 66, 79.

Alice Step One

“The ‘abstract idea’ step of the inquiry calls [for] look[ing] 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) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); see also *Enfish*, 822 F.3d at 1335, quoted in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016).

In that regard, Appellants indicate that “there is a need to attribute some tangible or real-world significance to credit scores so that individuals and business can easily, readily, and accurately ascertain the credit that is available to them.” Spec. ¶ 11. Appellants’ invention solves these problems by “simplify[ing] and streamlin[ing] the process of applying for and obtaining credit by bridging the divide that exists between credit reporting agencies, credit seekers, and credit providers ... to present actual amounts of credit that are available to a credit seeker from various credit providers without the credit seeker having to apply for credit from any one or more credit providers.” *Id.* ¶ 12. Acting as an intermediary, Appellants’ system identifies credit that is available to a credit seeker based on aggregated credit origination information obtained from a credit provider in exchange for referrals, and matches credit seekers with “quasi-preapproved” credit based on recently extended credit that others with similar qualifications have obtained from the credit provider. See *id.* ¶¶ 13–15, Abstract, Fig. 1.

Applying the framework in *Alice*, and as the first step of that analysis, the Examiner determines “[o]btaining and extracting credit origination data is a fundamental economic practice and thus, the claims include an abstract

idea.” Final Office Action (“Final Act.,” mailed July 20, 2015) 11.

According to the Examiner:

The claimed process of obtaining credit score of a credit seeker, extracting a portion of aggregated credit origination data, analyzing the obtained data to determine whether the credit seeker is prequalified for certain financial products, and presenting the amounts and terms of the prequalified financial products can be done by human using a pen and paper, without using computer. For example, a human loan official can obtain credit seeker’s credit report from credit bureau in paper form, mentally recognize relevant data and use such data to underwrite the credit seeker, and present the resulted prequalified amounts and terms in paper form.

Examiner’s Answer (“Ans.,” mailed March 11, 2016) 7. The Examiner further elaborates that “obtaining, verifying, extracting, and presenting credit origination data had been a longstanding economic practice in the finance art.” Final Act. 12.

Appellants contest Rejection I by arguing independent claims 1, 13, and 20 as a group. App. Br. 12. We select independent claim 1 as representative for this group. Therefore, claims 2–4, 6, 9, 10, 13–15, 17, 18, 20, 21, and 23–28 stand of fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Alleging error in the Examiner’s rejection under *Alice* step one, Appellants argue that the claims are not directed to an abstract idea because “there is nothing fundamental, as an economic practice or otherwise, about prequalifying a particular credit seeker for different lines of credit using the particular credit seeker’s credit score and without submitting any information about the particular credit seeker to any credit provider as provided when considering claims 1, 13, and 20 as a whole.” App. Br. 11; *see also* Reply Brief (“Reply Br.,” filed April 7, 2016) 2.

Appellants' argument fails to persuade us of error. In fact, Appellants concede that "the claims recite limitations that include the identified building block or abstract idea" (App. Br. 8), but argue that "[i]t is simply impossible for a claim that recites limitations involving a database and graphical user interfaces (GUIs) to be performed entirely by a human or in the human mind" (Reply Br. 7), and thus, incapable of being performed by a human using a pen and paper.

We agree with the Examiner that "a human loan official can obtain [a] credit seeker's credit report from [a] credit bureau in paper form, mentally recognize relevant data and use such data to underwrite the credit seeker, and present the resulted prequalified amounts and terms in paper form." Ans. 7. We also highlight the similarity between claim 1 and the claims before the Federal Circuit in *Mortgage Grader, Inc. v. First Choice Loan Services Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2015).² There, the court rejected a method of anonymous loan shopping as ineligible subject matter because the asserted claims all could be performed by humans without a computer. The court in *Mortgage Grader* stated:

The series of steps covered by the asserted claims—borrower applies for a loan, a third party calculates the borrower's credit grading, lenders provide loan pricing information to the third party based on the borrower's credit grading, and only thereafter (at the election of the borrower) the borrower discloses its identity to a lender—could all be performed by humans without a computer. *Cf. CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011)

² "[T]he decisional mechanism courts now apply is to examine earlier cases in which a *similar or parallel* descriptive nature can be seen—what prior cases were about, and which way they were decided." *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (emphasis added).

("[C]omputational methods which can be performed entirely in the human mind are the types of methods that embody the 'basic tools of scientific and technological work' that are free to all men and reserved exclusively to none.") (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

811 F.3d at 1324. Similar to claim 1, the claims in *Mortgage Grader* were implemented on a computer and recited a database and graphical user interfaces. As such, we are not persuaded the Examiner erred in determining that claim 1 is directed to an abstract idea under *Alice* step one. Therefore, the inquiry proceeds to step two to look at the claim for "something more" by "examin[ing] the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 134 S. Ct. at 2354, 2357 (quoting *Mayo*, 566 U.S. at 72, 80).

Alice Step Two

In step two, we consider the elements of the claim, both individually and as an ordered combination, to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). This is the search for an inventive concept, which is something sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. *Id.* For example, merely reciting the use of a generic computer cannot convert a patent-ineligible abstract idea into a patent-eligible invention. *Alice*, 134 S. Ct. at 2358; *Versata Dev. Group, Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1332 (Fed. Cir. 2015).

In the second step of the *Alice* analysis, Examiner determines: “[i]ndependent claim 1 and 1[3]³ do not disclose any additional element other than the abstract concept of gathering and extracting origination data. Independent claim 20 merely recites a computer readable storage medium and a microprocessor.” Final Act. 12–13. According to the Examiner, “[t]hese generic computer components are claimed to perform their basic functions of obtaining, verifying, extracting, and presenting data,” which “amounts to mere instructions to implement the abstract idea on a computer.” *Id.* at 12–13. The Examiner determines that “there is no inventive concept sufficient to transform the claimed subject matter into a patent-eligible application. The claims do not amount to significantly more than the abstract idea itself.” *Id.* at 13.

First, Appellants argue “[a] generic computer performing generic computer functions is not one that normally performs the claim 1 steps.” App. Br. 12. Appellants further argue “these are specialized steps performed by customized machines configured, programmed, or otherwise modified to implement the computer-implemented method of claim 1. App. Br. 13. According to the Appellants, “the task of determining available credit using prior art systems and methods is time consuming, tedious, and inefficient.” App. Br. 14.

We agree with the Examiner that the elements of the claim—both individually and when combined—do not transform the claimed abstract idea into a patent-eligible application of the abstract idea. The claimed invention can readily be understood as adding conventional computer

³ We note that the Examiner inadvertently cites canceled claim 12 instead of claim 13.

components to well-known business practices. Claim 1 does not recite any specialized hardware, and Appellants have not apprised us of any. For instance, claim 1 merely recites a “computer-implemented method” in the preamble of the claim, “a plurality of database records” and “a graphical user interface” in the steps of the process. And, the Specification indicates that the computer-implemented method is performed by generic computing devices and well-known, routine and conventional activity. *See, e.g.*, Spec ¶ 102 (“Examples of computer systems with which some embodiments are implemented include cellular telephones, smartphones, portable digital assistance, tablet devices, laptops, and netbooks.”), ¶ 72 (“For example, the credit origination data can be filtered by Standard Industrial Classification (SIC) codes in order to identify credit that is available to businesses operating in a particular industry.”), ¶¶ 103–109. The Federal Circuit has repeatedly determined that such claims do not contain an “inventive concept” under *Alice* step two and are invalid under § 101. *See Elec. Power Grp.*, 830 F.3d at 1353-56; *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 717 (Fed. Cir. 2014). And, “relying 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); *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“[O]ur precedent is clear that merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.”); *CLS Bank Int'l v. Alice Corp.*, 717 F.3d 1269, 1286 (Fed. Cir. 2013) (en banc) (Lourie, J., concurring).

Second, Appellants allege that in contrast to “well-understood, routine, or conventional activities, claim 1 recites ‘presenting from the subset of credit origination data, amounts and terms of credit the particular credit seeker is prequalified to receive from the subset of credit seekers without passing any information about the particular credit seeker to the subset of credit providers.’” App. Br. 14 (emphasis omitted). But the Federal Circuit has made clear that the output of data analysis, by “merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Elec. Power Grp.*, 830 F.3d at 1354 (citing *Content Extraction and Ultramercial*).

Third, Appellants contend “the limitations presented in independent claims 1, 13, and 20 offer similar rationale as the Federal Circuit presented in finding the claims at issue in *DDR Holdings, LLC. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. Dec 5, 2014) to be patent eligible.” App. Br. 15; *see also* Reply Br. 8–9. According to Appellants, “[t]he claims at issue in this appeal are also rooted in computer technology and provide [a] solution to overcoming different Internet-based problems.” *Id.* at 16.

We disagree that the claims before us are similar to *DDR Holdings*. Nothing in the asserted claims “purport[s] to improve the functioning of the computer itself” or “effect an improvement in any other technology or technical field.” *Alice*, 134 S. Ct. at 2359. Nor do the claims solve a problem unique to the Internet. *See DDR Holdings*, 773 F.3d at 1257. In *DDR Holdings*, the Federal Circuit determined that, although the patent claims at issue involved conventional computers and the Internet, 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 court, thus, held that the claims were drawn to patent-eligible 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.* Unlike the situation in *DDR Holdings*, Appellants do not identify any problem particular to computer networks that claim 1, 13, or 20 allegedly overcomes. Instead Appellants' credit feedback loop system "providing a second interface comprising a plurality of selectable links" and "presenting credit that is available to a credit seeker from different credit providers in a single interface without the credit seeker having to individually engage the credit provider" merely employs a generic computer elements to perform generic computer functions of organizing and presenting (credit origination data, amounts, and terms) via a graphical user interface.

For the foregoing reasons, we are not persuaded of Examiner error and sustain the rejection of independent claim 1 under 35 U.S.C. § 101, including claims 2–4, 6, 9, 10, 13–15, 17, 18, 20, 21, and 23–28, which fall with claim 1.

Rejections II and IV—Obviousness

Independent claim 1

Independent claim 1 requires, *inter alia*, "providing prequalified leads to the plurality of credit providers in exchange for aggregating a plurality of

credit origination data from the plurality of credit providers.” App. Br. 31 (Claims App.).

In rejecting claim 1 as obvious over Bennett, Guy, and Graham, the Examiner finds this limitation is disclosed by Bennett.

We are persuaded by the Appellants’ arguments, and find the Examiner’s reliance on Bennet is unsupported.

Bennett is directed to an online system using credit report information, loan affordability, screening, credit approval, and management functionality to facilitate the purchase and finance of products online. Bennet, Abstract. To evaluate loan acquisition, a processing engine may retrieve parameters that in some cases uses “origination [data that] may depend, at least partially, on whether or not the loan fits within parameters of loans previously purchased by the lender or some other entity.” Bennett, col. 15:20–39. Additionally, Bennett teaches “[a]t a block **1813**,⁴ the individual lenders’ requirement to execute pre-qualification processing is determined. If it is determined to be necessary, pre-qualification analysis is performed at a next block **1815** to determine if the credit request is within guidelines at a subsequent decision block **1819**.” Bennett, Col. 25:60–66.

The Examiner finds that “running pre-qualification analysis for a lender or a plurality of lenders (i.e. credit providers) using the lenders’ requirements, and if a borrower’s credit (obtained from credit origination data) is within the pre-qualification guideline set forth by the lender or lenders, the prior system sends the credit request to the particular lender or lenders” corresponds to “providing prequalified leads to the plurality of credit providers in exchange for aggregating a plurality of credit origination

⁴ Referencing Bennett, Figure 18.

data.” Ans. 15. A rejection based on 35 U.S.C. § 103 clearly must rest on a factual basis. Bennett is directed to a loan facilitation system, in which credit seekers are being evaluated based on lender qualification parameters and guidelines, but Appellants’ invention exchanges leads for aggregated credit origination data, in which the aggregated origination data consists of credit scores, amounts, and terms of actual credit obtained by credit seekers from credit lenders. Executing a pre-qualification type analysis based on credit provider guidelines is not the same as analysis based on aggregated credit origination data. Thus, the Examiner’s findings as to the above disputed limitation of claim 1 is unsupported by the record before us.

Therefore, we do not sustain the rejection of independent claim 1, including dependent claims 2–4, and 6.

Independent claims 13 and 20

Independent claims 13 and 20 recite substantially similar subject matter as independent claim 1. Specifically, claim 13 recites “providing prequalified leads to the plurality of credit providers in exchange for aggregating from the plurality of credit providers, a plurality of credit origination data comprising amounts and terms of credit a plurality of credit seekers,” and claim 20 recites “aggregating a first set of credit origination data identifying amounts and terms of credit.” App. Br. 33–34, 36–37 (Claims App.).

Therefore, we do not sustain the obviousness rejection of independent claims 13 and 20 for the same reasons, including claims 14, 18, 21, and 28, which depend from either claim 13 or 20.

Appeal 2016-005011
Application 13/475,377

Rejections III, V, VI, and VII—Obviousness

We also do not sustain the obviousness rejections of claims 9, 10, 15, 17, 23–27 for the same reasons, because each of these claims depends from one of claims 1, 13, and 20, and the Examiner has not relied on the additional cited references to cure the deficiency in Bennett.

DECISION

The Examiner's rejection under 35 U.S.C. § 101 is AFFIRMED.

The Examiner's rejections under 35 U.S.C. § 103 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