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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* DAVANUM M. SRINIVAS, LEO F. PARKER,  
IGOR S. SEDUKHIN, DMITRI TCHEREVIK, and VLAD UMANSKY

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Appeal 2016-005021  
Application 11/333,481<sup>1</sup>  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, PHILIP J. HOFFMANN, and  
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 2, 4–11, 14–17, 19–26, 29–32, 34–41, and 44–46. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> The Appellants identify Computer Associates Think, Inc. as the real party in interest. Appeal Br. 4.

### ILLUSTRATIVE CLAIM

1. A method implemented through a computer system having access to a network, wherein the method, as implemented through the computer system, comprises:

intercepting a communication from a consumer of a service to a service provider via a network connection, the communication comprising information about said consumer and a purchase order for the service from the service provider, and the purchase order comprising at least one of a value associated with the service requested and a term of a Service Level Agreement (SLA);

electronically processing said communication to obtain said information about said consumer and said at least one of the value associated with the service requested and the term of the SLA;

determining if said purchase order complies with a policy associated with said consumer based on said information about said consumer and said at least one of the value associated with the service requested and the term of the SLA; and

remediating said communication by at least one of blocking and modifying said purchase order if it is determined that said purchase order does not comply with said policy.

### REJECTIONS<sup>2</sup>

I. Claims 1, 2, 4–11, 14–17, 19–26, 29–32, 34–41, and 44–46 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

II. Claims 1, 2, 4–11, 14–17, 19–26, 29–32, 34–41, and 44–46 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lerner et al. (US 2005/0080914 A1, pub. Apr. 14, 2005) (hereinafter “Lerner”), Reese (US

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<sup>2</sup> We regard as inadvertent, the inclusion of canceled claims 3, 18, 33, and 42 in the rejections (Final Action 7, 10). *See* Appeal Br. 27, 30, 33, 34.

2006/0015353 A1, pub. Jan. 19, 2006), and Dordick et al. (US 2004/0230459 A1, pub. Nov. 18, 2004) (hereinafter “Dordick”).<sup>3</sup>

#### FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

#### ANALYSIS

##### *Subject-Matter Eligibility*

Applying the first step of the methodology delineated in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014), the rejection states that the claims are directed to the abstract idea of “collect[ing], stor[ing], display[ing], and compar[ing] data to optimize . . . a term of a service level agreement objective.” Final Action 8. Further, under the second *Alice* step, the claims do not include any additional elements — whether considered individually or in combination — that amount to significantly more than the identified abstract idea, because the claims involve only a computer and associated network performing basic functions that are well-understood, routine, conventional activities previously known to the industry. *Id.*

The Appellants argue claims 1, 2, 4–11, 14–17, 19–26, 29–32, 34–41, and 44–46 as a group. Appeal Br. 16–19. Claim 1 is selected for analysis herein. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Disputing the rejection, the Appellants argue, with respect to the first step of the *Alice* analysis, that the Examiner erred in characterizing the identified abstract idea as “*optimiz[ing]* . . . a term of a service level

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<sup>3</sup> We regard as inadvertent, the inclusion of canceled claims 3, 18, and 33, in Rejection II (Final Action 10). *See* Appeal Br. 27, 30, 33.

agreement objective,” because “[t]he claimed embodiments ‘*intercept*[ ] a communication . . . comprising . . . a purchase order’ and ‘*remediat[e]* said communication by at least one of *blocking* and *modifying* said purchase order.’” Appeal Br. 16, emphasis added. Yet, the Appellants do not demonstrate any error in the Examiner’s characterization of the abstract idea, because the Appellants do not explain why the recited “intercepting” and “remediating” do not amount to “optimiz[ing] . . . a term of a service level agreement objective” (Final Action 8). Indeed, “[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). Proposing an alternative characterization of the abstract idea identified in the rejection does not demonstrate error in the first part of the *Alice* analysis.

Referring to the longstanding commercial practice of relying on employee hierarchy, so as to ensure that employees comply with corporate policy, the Appellants also argue that the claimed subject matter “is not merely a method of organizing [a] type of human activity,” because the computer-implemented method “eliminates certain aspects of that human activity” (such as requiring a manager’s signature on a purchase order of a particular value). Appeal Br. 17 (citing Spec. 2, ll. 5–11). Yet, courts use “the phrase ‘methods of organizing human activity’ to describe concepts relating to interpersonal and intrapersonal activities, such as managing relationships or transactions between people, social activities, and human behavior; satisfying or avoiding a legal obligation; advertising, marketing, and sales activities or behaviors; and managing human mental activity.” MPEP § 2106.04(a)(2)(II) (9th ed., Rev. 8, Jan. 2018) (collecting cases).

Thus, the abstract-idea category of certain methods of organizing human activity properly applies to claim 1.

The Appellants also contend that claim 1’s “result is more than what would be present if the individual functions were ‘reconsidered separately’” (Appeal Br. 18 (citing Final Action 6)), but the Appellants do not explain how this assertion might bear upon the subject-matter eligibility analysis.

The Appellants also argue that “[t]he claims also are directed to more than just an abstract idea or a general purpose computer because they recite with particularity the functionality required to achieve this result — namely, ‘intercept[ing],’ ‘blocking,’ and/or ‘modifying’ communications that don’t comply with a particular policy.” Appeal Br. 18. Yet, reciting subject matter “with particularity” does not establish non-abstractness.

The Appellants also argue that the claims satisfy the machine-or-transformation test. *Id.* Although the Supreme Court noted in *Bilski v. Kappos*, 561 U.S. 593, 604 (2010), that the machine-or-transformation test is a “useful and important clue” for determining patent eligibility, the Court, in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 88 (2012), emphasized that satisfying the machine-or-transformation test, by itself, is not sufficient to render a claim patent-eligible.

As to the second *Alice* step, the Appellants argue that the claimed embodiments effect an improvement to the field of service-oriented architectures and “to any computer implementing this functionality.” Appeal Br. 16–17. Further, the Appellants contend that the problem addressed by the claims “arose uniquely in the context of service-oriented architectures in which consumers may purchases services from service

providers over a network, and the solution provided by the claimed embodiments is a specific technique for solving that problem.” *Id.* at 18.

Yet, the Appellants do not identify any claimed “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,’” as required under the second step of the *Alice* framework. *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 73).

In view of the foregoing, the Appellants do not persuasively argue that the Examiner erred in the rejection of claim 1. Accordingly, we sustain the rejection of claims 1, 2, 4–11, 14–17, 19–26, 29–32, 34–41, and 44–46 are rejected under 35 U.S.C. § 101

#### *Obviousness*

1. *Independent Claims 1, 16, 31, and 46; and  
Dependent Claims 2, 4–11, 15, 17, 19–26, 30, 32, 34–41, and 45*

The Appellants argue independent claims 1, 16, 31, and 46 as a group. Appeal Br. 19–24. Claim 1 is selected for analysis herein. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Independent claim 1 recites, in relevant part, “intercepting a communication from a consumer of a service . . . the communication comprising . . . a purchase order” and “remediating said communication by at least one of blocking and modifying said purchase order if it is determined that said purchase order does not comply with said policy.” Appeal Br. 20–21. Specifically, the Appellants argue that Lerner does not teach “at least one of blocking and modifying said purchase order,” if it violates a policy. *Id.*

Yet, Lerner states: “According to a specific embodiment, when such a policy violation occurs (215), *the message is rejected* (217), and the portion, i.e., policy assertions, of the policy tree(s) to which the violation corresponds is identified (218).” Lerner ¶ 40 (emphasis added). Indeed, the Appellants contend that, in a Lerner embodiment, “a policy violation results in an inability for two entities to communicate.” Appeal Br. 20 (citing Lerner ¶¶ 18, 29, 40, 83). Therefore, we are not persuaded of error in the rejection of claim 1, based upon the Appellants’ assertion that the identified prior art does not teach or suggest the “blocking.”

The Appellants also argue that claim 1 was rejected erroneously, because Lerner does not teach or suggest:

electronically processing said communication to obtain said information about said consumer and said at least one of the value associated with the service requested and the term of the SLA [Service Level Agreement]; [or]

determining if said purchase order complies with a policy associated with said consumer based on said information about said consumer and said at least one of the value associated with the service requested and the term of the SLA.

Appeal Br. 21. Yet, this argument is not persuasive, because the rejection relies upon Reese for the disclosure of these features (*see* Final Action 10–11) — not Lerner.

The Appellants contend that “*Reese* fails to cure the deficiencies of *Lerner*,” because Reese does not disclose or suggest “intercepting” a “purchase order” sent by a “consumer of a service” and “remediating” that purchase order based on its contents. Appeal Br. 22. Yet, this argument is not persuasive, because the rejection relies upon Lerner for the disclosure of these features (*see* Final Action 10) — not Reese.

Although the Appellants assert that “the Examiner acknowledges that both *Lerner* and *Reese* fail to disclose or suggest a ‘purchase order comprising at least one of a value associated with the service requested and a term of a Service Level Agreement (SLA)’” (Appeal Br. 22 (citing Final Action 12)), the rejection relies upon Dordick for these features (Final Action 12) — not Lerner or Reese.

In addition, the Appellants argue that “*Dordick* fails to cure the deficiencies of *Lerner* and *Reese*,” because Dordick does not teach or suggest “intercepting” a “purchase order” sent by a “consumer of a service” and “remediating” that purchase order. Appeal Br. 23–24. Yet, this argument is not persuasive, because the rejection relies upon Lerner for the disclosure of these features (*see* Final Action 10) — not Dordick.

In view of the foregoing, the Appellants’ arguments are not persuasive of error in the rejection of claim 1. Accordingly, we sustain the rejection of independent claim 1 — as well as the rejection of independent claims 16, 31, and 46, and dependent claims 2, 4–11, 15, 17, 19–26, 30, 32, 34–41, and 45 (for which no separate argument is presented (*see* Appeal Br. 24)).

## 2. *Dependent Claims 14, 29, and 44*

Dependent claim 14 recites: “The method of claim 1, wherein said step of remediating comprises modifying said communication to produce a communication that represents a transaction that complies with said policy.”

According to the Appellants, Lerner describes deleting messages that do not comply with a policy and neither Reese nor Dordick cures such deficiency of Lerner. Appeal Br. 25 (citing Lerner ¶¶ 83, 96).

Neither the Final Office Action (pages 13, 15), nor the Answer (pages 23–24), identify any prior art that teaches or suggests the recited “modifying said communication to produce a communication that represents a transaction that complies with said policy” of claim 14.

Accordingly, the rejection of dependent claim 14 — and, for similar reasons, dependent claims 29 and 44 — under § 103(a) is not sustained.

#### DECISION

We AFFIRM the Examiner’s decision rejecting claims 1, 2, 4–11, 14–17, 19–26, 29–32, 34–41, and 44–46 under 35 U.S.C. § 101.

We AFFIRM the Examiner’s decision rejecting claims 1, 2, 4–11, 15–17, 19–26, 30–32, 34–41, 45, and 46 under § 103(a).

We REVERSE the Examiner’s decision rejecting claims 14, 29, and 44 under § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED