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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte IAN S. BECKER

Appeal 2016-005442
Application 12/688,133
Technology Center 3600

Before: MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
MICHAEL W. KIM, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Appellant seeks our review under 35 U.S.C. § 134 from the
Examiner's final rejection of claims 1–21. We affirm.

¹ The Appellants identify the inventor, Ian Saul Becker, as the real party in
interest. (Br. 3).

THE CLAIMED INVENTION

Appellant's claims are generally directed to "booking transportation that enables passengers to equally share the cost of the transportation by consolidating their itineraries." (Spec. para. 1). Claim 6 is illustrative of the claimed subject matter:

6. A computer-implemented method for booking transportation over the internet comprising
 - receiving, by one or more computer systems, search criteria from a passenger, where the passenger sends the search criteria through a web browser;
 - sending, by one or more computer systems, open flight listings to the passenger, where the passenger can view the open flight listings through a web browser;
 - joining the passenger to a flight listing;
 - joining additional passengers to the flight listing; and
 - notifying the passengers upon the occurrence of a limiting event, where the passengers are notified of the cost per passenger of traveling the flight listing, where the passengers are allowed to accept or reject the flight listing;where the flight listing has a total cost, where the cost per passenger is the total cost divided by the number of passengers that have joined the flight listing.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

- | | | |
|--------|--------------------|---------------|
| Nelson | US 6,496,568 | Dec. 17, 2002 |
| Stener | US 8,244,549 B1 | Aug. 14, 2012 |
| Eagle | US 2009/0198624 A1 | Aug. 6, 2009 |
- "Check Into Safety, Costs and Convenience When Considering Commercial Airline Alternatives", Arkansas Business, Dec. 27, 1999 (hereinafter "Arkansas Business").

REJECTIONS

The following rejections are before us for review.

The Examiner rejected claims 1–21 under 35 U.S.C. § 101 as reciting ineligible subject matter in the form of an abstract idea.

Claims 1, 2, 5–11, 13, 14, 16–18, 20, and 21 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Eagle, Arkansas Business, and Stener.

Claims 3, 4, 12, and 19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Eagle, Arkansas Business, Stener, and Official Notice.

Claim 15 is rejected under 35 U.S.C. § 103(a) as unpatentable over Eagle, Arkansas Business, Stener, and Nelson.

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence.

1. The Specification describes that the “Internet can be any form of interactive medium that facilitates rapid interactive exchange of data between a plurality of individuals or systems” (Spec. para. 64).
2. Eagle discloses “. . . an Internet-based reservation system, that allows charter jet operators to fill empty legs of charter flights by selling seats on these legs directly to travelers.” (Eagle para. 9).
3. Eagle discloses charging customers a fee based on prices offered from among several operators. (*Id.* at para. 36).
4. Arkansas Business discloses determining a passenger’s cost by dividing “the cost of a chartered airplane by the number of passengers on board.” (Arkansas Business p. 2).

5. Stener discloses sharing the cost of a charter flight amongst fractional owners of the aircraft who choose to fly on it at the reserved flight. (Stener Fig. 8).
6. Stener discloses “[i]f a determination at step 810 is made that there are more than five owners thinking of flying at a close time, then the reconfirmation of interests in the times, cities, etc., is made at step 816 by the fractional operator 102.” (Stener col. 22 ll. 25–28).

ANALYSIS

Rejection under 35 U.S.C. § 101

Initially, we note that Appellant argues claims 1–21 together as a group. (Br. 13). Correspondingly, we select independent method claim 6 as representative to decide the appeal of these claims, with remaining independent method claims 17 and 21 standing or falling with claim 6. Appellant does not provide a substantive argument as to the separate eligibility of claims 7–16, and 18–20 that depend from claims 6 and 17. Thus, claims 7–21 stand or fall with claim 6. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant argues the claims do not represent abstract ideas, because “the claims address a technological challenge of consolidating multiple unique requests for booking transportation from remote parties that is necessarily rooted in the Internet.” (Br. 13). Appellant also argues the claims are more than fundamental economic practices and methods of organizing human behavior, as asserted by the Examiner, in that claims 1–5 are “a system that consolidates requests made by users over the Internet,” and in claims 6–21 “[u]sers are joined and removed from the flight listing,

and notified upon the occurrence of limiting events.” (Br. 14). Appellant additionally argues the claims are “Internet rooted,” “concrete and tangible,” and “do not preempt the field of ‘coordinating travel plans.’” (Br. 15–16).

The patent statute provides that a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. Yet the Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. 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)). The Court has, thus, made clear that “[p]henomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Labs., 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 these concepts.” *Alice*, 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.* If so, the second step is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (citing *Mayo*, 132 S. Ct. at 1291, 1297). In other words, the second step is to “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.’” *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

In rejecting claims 1–21 under 35 U.S.C. § 101, the Examiner finds that the claimed method steps, as recited in independent claims 1, 6, 17, and 21, “are directed to the abstract idea of coordinating travel plans, which is a method of organizing human activities.” (Final Act. 4).

We agree.

Independent claim 6 recites steps for providing information about a shared flight listing to users, where the cost of the flight is divided equally between users, and where a user is permitted to join or leave the common flight listing.

The invention is, thus, a version of the well-known practice of seeing who wants to share the cost of a common purchase. Sharing the cost of a purchase is a long-standing practice that predates the use of computers to determine the cost parameters and keep track of who is in the group. The claim is, thus, directed to a fundamental economic practice of arranging to share the cost of a purchase. The claimed method also is merely a way to arrange an order of steps to be performed so people can receive information to decide if they will participate in a shared group purchase, and, thus, organize the behavior of people interested in sharing a purchase.

In addition, the claim recites methods that could be performed entirely through mental thought. The claim requires only sending and receiving information about potential common purchases (e.g., “who wants to share the cost of a pizza or some nachos?”), keeping track of who is in a group has

joined a “flight listing” and what the average cost is as users join or leave the listing, and notifying users of a “limiting event.” All of these steps can be done by thought, speaking, or the use of pen and paper to communicate.

The Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”). Additionally, mental processes, e.g., sending information to a user, as recited in claim 6, or joining users to a list, as recited in claim 17, remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *Id.* at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*, [409 U.S. 63 (1972)].”).

Independent method claims 6, 17, and 21 are, thus, directed to abstract ideas.

Turning to the second step of the *Alice* analysis, because we find that claims 6, 17, and 21 are directed to abstract ideas, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself.

Claim 6 recites that a computer receives requests and responds with information, where the information “can” be viewed with a browser. Claim 6 does not provide for additional steps performed by a user, and does not require that a computer determine the response to the request. There is

nothing recited in the claim, or described in the Specification, that requires special programming to a generic computer to permit communicating information between a user and a computer, nor keeping a list. In fact, the recited steps performed by the computer are basic computer functions performed by general purpose computers. In addition, other forms of communication, such as by telephone, are described as being within the scope of the invention. (FF 1).

“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal citations and quotation marks omitted).

Nothing in claims 6–21 purports to improve computer functioning or “effect an improvement in any other technology or technical field.” *Alice*, 134 S. Ct. at 2359. Nor do claims solve a problem unique to the Internet, because having an interest in sharing the cost of a common purchase does not require that the Internet be involved. *See DDR Holdings*, 773 F.3d at 1257. The claims also are not adequately tied to “a particular machine or apparatus,” because no special programming is required for the steps required to be performed by a computer. *Bilski v. Kappos*, 561 U.S. 593, 601 (2010).

Because claims 6–21 are directed to an abstract idea, and nothing in the claims amounts to significantly more than the abstract idea itself, the claims are not patent-eligible under § 101. Therefore, we affirm the Examiner’s rejection of claims 6–21 under 35 U.S.C. § 101.

We find no meaningful distinction between independent method claim 6 and independent system claim 1. The claims all are directed to the same underlying invention. Claim 1 additionally requires a computer to store data, calculate a price, and add and remove a user from a list, but these are basic computer functions not requiring special programming. Therefore, we affirm the Examiner's rejection of independent claim 1 under § 101. As the Federal Circuit has made clear "the basic character of a process claim drawn to an abstract idea is not changed by claiming only its performance by computers, or by claiming the process embodied in program instructions on a computer readable medium." *See CyberSource*, 654 F.3d at 1375-76 (citing *In re Abele*, 684 F.2d 902 (CCPA 1982)).

Because we find that dependent claims 2–5 lack additional elements that would render the claims patent-eligible, we also affirm the Examiner's rejection under § 101 of these dependent claims on the same basis as the independent claim from which they depend.

§ 103(a) Rejection of Claims 1, 2, 5–11, 13, 14, 16–18, 20, and 21

Initially, we note that Appellant apparently argues independent claims 1, 6, 17, and 21 together as a group. (Br. 17). Correspondingly, we select representative claim 6 to decide the appeal of these claims, with remaining claims 1, 17, and 21 standing or falling with claim 6. Appellant does not provide a substantive argument as to the separate patentability of claims 2, 5, 7–11, 13, 14, 16, 18, 20, and 21 that depend from claims 1, 6, and 17. Thus claims 1, 2, 5, 7–11, 13, 14, 16–18, 20, and 21 stand or fall with claim 6. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant argues “none of the cited prior art teach the limitation of the cost per passenger as total cost of providing the flight listing divided by the passengers joined to an open flight listing.” (Br. 17). Appellant additionally argues that, unlike Arkansas Business, the claimed invention “is based on the number of passengers joined to a flight listing, not on board the aircraft.” (Br. 18).

We are not persuaded by Appellant’s arguments. Eagle discloses a charter airplane reservation system to sell open seats on a charter flight. (FF 2). Eagle reports the price of each seat as reported by each flight operator upon an inquiry. (FF 3). The Examiner then finds that “Arkansas Business discloses cost per passenger by dividing the total cost of the chartered airplane by the number of passengers [who] joined to the flight listing (page 2, para. 1). (Final Act. 5). Although Arkansas Business uses the term “on board” (FF 4), we are unpersuaded that the ordinary artisan would have restricted its meaning to only those passengers physically on board the aircraft at the time of take-off. Instead, the ordinary artisan would have more broadly interpreted this phrase as the cost of the flight, if the flight were divided by that number of passengers who may choose to fly. *See KSR Int’l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (In making the obviousness determination one “can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”) In addition, “a person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 421. As asserted by the Examiner, the ordinary artisan was aware of passengers “thinking of flying” and “reconfirmation” of that interest (FF5, 6), indicating that consideration of changes based on

variability of passengers, of which cost would be one, was within the abilities of the ordinary artisan. Ans. 6.

Appellant argues the “cost per passenger on board a chartered airplane cannot change - Arkansas Business simply provides that each passenger's pro rata share of the total cost of the chartered flight is the total cost divided by the number of passengers that fly the chartered aircraft.” (Br. 17).

Appellant further argues neither Stener nor Eagle discloses “recalculating that same cost again; rather, they just teach making a cost calculation at different times” (*Id.* 18), “there is no motivation to recalculate the cost per passenger,” and “the combination of references would teach away from recalculating the cost per passenger since the number of passengers on board an aircraft couldn't change and thus the cost per passenger couldn't change.” (*Id.*).

We are not persuaded by the arguments, because Stener, which is directed to sharing charter airplane flying costs (FF 5), discloses if there are “more than five owners thinking of flying at a close time, then the reconfirmation of interests in the times, cities, etc., is made.” (FF 6). The ordinary artisan would understand that cost would vary until the number of passengers sharing the costs is fixed, and that communicating those varying costs would be a relevant item of information upon which to require “reconfirmation,” thus, meeting the claim language.

§ 103(a) Rejection of Claims 3, 4, 12, 15, and 19

We affirm the rejections of claims 3, 4, 12, 15, and 19, which are not argued separately.

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 1–21 under 35 U.S.C. § 101.

The Examiner did not err in rejecting claims 1–21 under 35 U.S.C. § 103(a).

DECISION

For the above reasons, the Examiner’s rejection of claims 1–21 are 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