UNITED STATES PATENT AND TRADEMARK OFFICE

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12/073,642	03/07/2008	Prasad Yendluri	30478-255291	1003

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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 PRASAD YENDLURI

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Appeal 2016-005590
Application 12/073,642[1]
Technology Center 3600

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Before JUSTIN BUSCH, JOHN D. HAMANN, and
STEVEN M. AMUNDSON, *Administrative Patent Judges.*

HAMANN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant files this appeal under 35 U.S.C. § 134(a) from the

Examiner's final rejection of claims 1–14 and 20. Claims 15–19 were

withdrawn. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellant, the real party in interest is Software AG. App.
Br. 3.

THE CLAIMED INVENTION

Appellant's claimed invention relates to "distributed business process tracking," and includes clients that can receive notifications from providers that perform distributed business processes. Abstract. Claim 1 is reproduced below.

> 1. A non-transitory computer-readable medium comprising instructions, which when executed by a computer system causes the computer system to perform operations for distributed business process tracking, the distributed business process including a process executed by the computer system and a process executed by a remote computer system, the computer-readable medium comprising:
>
> instructions for receiving from a client via a Web Service-Process Tracking (WS-PT) web service a request to initiate a distributed business process;
>
> instructions for determining processes that are used by the distributed business process;
>
> instructions for sending to the client via the WS-PT web service a list comprising the determined processes that are available for tracking;
>
> instructions for receiving from the client via the WS-PT web service a selected process from the plurality of processes available for tracking;
>
> instructions for sending to the client via the WS-PT web service an end point reference for the selected process;
>
> instructions for receiving from the client via the WS-PT web service a subscription request for the selected process at the end point reference;
>
> instructions for sending to the client via the WS-PT web service a confirmation of receipt of the subscription request for the selected process;
>
> instructions for communicating with the remote computer system regarding a status of the process executed by the remote computer system;
> and

> instructions for sending to the client via the WS-PT web
> service a notice for the selected process, wherein the notice is
> based on the communication with the remote computer system;
> > wherein the client is configured to:
> > > receive notifications from a plurality of providers
> > > at end point references of a second plurality of processes,
> > > wherein the notice is one of the notifications and the
> > > distributed business process comprises the second
> > > plurality of processes, and
> > > determine progress of the distributed business
> > > process toward completion based on the notifications.

REJECTIONS ON APPEAL

(1)   The Examiner rejected claims 1–14 and 20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

(2)   The Examiner rejected claims 1–11 and 20 under 35 U.S.C. § 102(e) as being anticipated by Vengroff (US 2008/0177872 A1; published July 24, 2008).

(3)   The Examiner rejected claims 12–14 under 35 U.S.C. § 102(e) as being anticipated by Vengroff or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over Vengroff.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's contentions that the Examiner erred. We disagree with Appellant's arguments with respect to the § 101 rejection, and we incorporate herein and adopt as our own the findings, conclusions, and reasons with respect to this rejection as set forth by the Examiner in (1) the February 24, 2015 Final Office Action ("Final Act." 2–29) and (2) the March 10, 2016 Examiner's

Answer ("Ans." 2–40). We agree with Appellant that the Examiner errs with respect to the §§ 102 and 103 rejections.

(1) *§ 101 rejection*

Appellant contends the Examiner improperly rejected claims 1–14 and 20 under 35 U.S.C. § 101. *See* App. Br. 9–13; Reply Br. 2–4. Appellant argues the rejected claims as a group. Thus, we decide the appeal of the § 101 rejection on the basis of representative claim 1, and refer to the rejected claims collectively herein as "the claims." *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

According to Appellant, the claims do not concern an abstract idea, and even if they did, the claims would be patent eligible because the claims amount to significantly more than an abstract idea. *See* App. Br. 9–13; Reply Br. 2–4. We find Appellant's arguments unpersuasive.

Section 101 of the Patent Act provides that "[w]hoever 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. The Supreme Court has explained that this provision is subject to a long-standing, implicit exception: "[l]aws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). The Court has set forth a two-part inquiry to determine whether this exception applies. First, we must determine if the claim at issue is directed to one of those patent-ineligible concepts. *Id.* at 2355. Second, if the claim is directed to one of those patent-ineligible concepts, we must consider the elements of the claim "both individually and as an ordered combination to determine whether the

additional elements transform the nature of the claim into a patent-eligible application." *Id.* (internal quotation marks omitted) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72 (2012)).

> (i)   Abstract idea

We first consider whether the Examiner properly concluded the claims are directed to one or more abstract ideas. For example, the Examiner concluded that the claims on appeal "describe the concept of determining progress of [a] distributed business process toward completion based on notifications" — or stated more generically as "receiving and forwarding data." Final Act. 2, 27–29 (emphasis omitted). The Examiner further finds that this concept is similar to processing information through a clearinghouse, which the Federal Circuit has found to be an abstract idea. *See* Final Act. 27, 29 (citing *Dealertrack, Inc. v. Huber*, 674 F.3d 1315 (Fed. Cir. 2012)); Ans. 28–29 (citing same).

Appellant argues the claims are not directed to an abstract idea, nor are they drawn to a fundamental economic practice. App. Br. 10; Reply Br. 2–4. Rather, the claims "are directed to a computer system that performs operations for tracking distributed processes," which is not an abstract idea, according to Appellant. App. Br. 10. Appellant also asserts that the claims "do not attempt to preempt every application of the idea of communicating messages and instructional content between a client and a provider for distributed business process tracking." App. Br. 11; Reply Br. 4.

Appellant has not persuaded us that the Examiner erred. The Federal Circuit has explained that the abstract-idea inquiry requires "looking at the 'focus' of the claims, their 'character as a whole,'" to determine if the claims are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830

F.3d 1350, 1353 (Fed. Cir. 2016). Claim 1 recites a method for distributed business process tracking embodied as instructions on a computer-readable medium. App. Br. 21.

We agree with the Examiner that the claims are directed to an abstract idea of "determining progress of [a] distributed business process toward completion based on notifications." In this regard, the claims of the instant application are similar to the claims in *Dealertrack*, which the Federal Circuit characterized in their simplest form as (i) receiving data from one source, (ii) selectively forwarding the data, and (iii) forwarding reply data to the first source. *Dealertrack*, 674 F.3d at 1333; *see also Elec. Power*, 830 F.3d at 1351 (finding claims directed to "requiring the collection, analysis, and display of available information in a particular field" as being directed to an abstract idea). Furthermore, our reviewing Court treats "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Elec. Power*, 830 F.3d at 1353–54. The claims of the instant application likewise can be viewed essentially as mental processes (e.g., determining which processes are used by a distributed process, listing these processes, selecting a process from the list, requesting status notification of the selected process, receiving the notification, and determining status of overall completion of the distributed process). These cases are sufficiently analogous to establish that the instant claims are directed to an abstract idea. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (explaining that when determining whether claims are directed to an abstract idea, "both this court and the Supreme

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Court have found it sufficient to compare [the] claims at issue to those claims already found to be directed to an abstract idea in previous cases").

(ii) Inventive concept

We next consider whether the Examiner correctly concluded the claims do not include 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 (internal quotation marks omitted) (quoting *Mayo, Inc.*, 566 U.S. at 72–73). The Examiner explained the claims' "limitations are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry." Final Act. 2, 28. The Examiner also finds Appellant's arguments analogizing the instant claims to *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), inapposite because "the patent claims here do not address problems unique to the Internet, so DDR has no applicability." Final Act. 29. Likewise, the Examiner finds Appellant's reliance on *Diamond v. Diehr*, 450 U.S. 175 (1981), misplaced because "*Diehr* does not stand for the general proposition that a claim implemented on a computer elevates an otherwise ineligible claim into a patent-eligible improvement." Final Act. 31. The Examiner concludes "[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception." Final Act. 2. Appellant argues "the claims recite an inventive concept that is sufficiently more than the asserted abstract idea itself." App. Br. 11. More specifically, Appellant argues the claims' limitations "recite a specific implementation of

tracking a distributed business process." App. Br. 11–12. For example, Appellant argues the claims, like in *DDR*, "recite specific implementations and practical applications directed to solving a problem in the realm of computer networks." App. Br. 10. Appellant similarly argues *Diehr* is in accord with the present claims in that the "present claims recite a computer-implemented process that uses equations in a process designed to solve a technological problem in conventional practice[, and] . . . like *Diehr* the present claims are patent-eligible because they improve an existing technological process." App. Br. 12–13. Appellant also contends "the claims at issue do not attempt to preempt every application of the idea of communicating messages and instructional content between a client and a provider for distributed business process tracking." App. Br. 11.

We agree with the Examiner that the claims do not amount to significantly more than the abstract idea. Appellant fails to refute sufficiently the Examiner's finding, with which we agree, that the claims perform functions "that are well-understood, routine, and conventional activities previously known to the industry," rather than being an inventive concept. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (internal quotation marks omitted) (quoting *Alice*, 134 S. Ct. at 2357) (finding using known elements to perform "conventional steps, specified at a high level of generality, which is insufficient to supply an inventive concept"). Furthermore, the claims do not specify a special purpose computer (as Appellant argues the claims' limitations create), but rather describe routine and conventional steps to be carried out by the equivalent of a generic computer (i.e., "apply it with a computer"), and, thus, they fail to provide an inventive concept. *See Versata Dev. Grp., Inc. v. SAP Am., Inc.*,

793 F.3d 1306, 1332 (Fed. Cir. 2015) (finding an inventive concept "requires more than simply stating an abstract idea while adding the words 'apply it' or 'apply it with a computer'" (quoting *Alice*, 134 S. Ct. at 2358)). The fact that a generic computer requires relevant programming does not change the programmed generic computer into a special purpose computer. *See id.*

We are unpersuaded by Appellant's reliance on *DDR* and *Diehr*. *DDR* addressed a technological problem specific to a particular technological environment by implementing a specific solution for that technological environment and different from the routine or conventional use for that environment. *Diehr* involved a transformative manufacturing process involving "constantly determining the temperature of the mold [and] constantly recalculating the appropriate cure time through the use of the [mathematical] formula." *See Diehr*, 450 U.S. at 187. Appellant has not provided persuasive evidence of any similar or sufficient transformative use.

We also are unpersuaded by Appellant's arguments that the claims pose no risk of preempting the abstract idea itself. A lack of preemption does not make a claim patent eligible. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) ("While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility."); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("[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.").

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For the above reasons, we sustain the Examiner's rejection of claims 1–14 and 20 under 35 U.S.C. § 101.

(2)   Arguments relating to §§ 102 and 103 rejections

Appellant argues Vengroff fails to disclose that "the ***client*** is configured to . . . ***determine progress*** of the distributed business process ***toward completion*** based on the notifications," as recited in independent claims 1 and 12, and in similar, relevant scope in independent claim 8. App. Br. 13–15; Reply Br. 5–7. More specifically, Appellant argues Vengroff fails to make any mention of determining *progress* of a distributed business process *toward completion*. App. Br. 14–15 (citing Vengroff ¶ 26). Rather, Vengroff discloses "aggregat[ing] multiple outgoing communications intended for one or more remote client application recipients into a single reply envelope" for S-CAM systems. *Id.*

The Examiner finds that Vengroff discloses the disputed limitation. Ans. 31–32. More specifically, the Examiner finds Vengroff discloses that "incoming communications intended for client applications are recognized based on their name, unique identifiers, named references, URLs etc. The communications are requests for information and/or functionality from the remote network service(s) that are specified by the client applications." *Id.* (citing Vengroff ¶¶ 10, 26, 35). The Examiner finds Vengroff, thus, discloses "the ability to identify unique identifiers and functionalities from remote sources in communications sent at a predetermined time and/or in response to requests from the client applications." Ans. 32. The Examiner concludes that this ability "is equivalent to determining progress of the distributed business process toward completion based on the notifications." *Id.*

We are persuaded by Appellant's arguments. We agree that the cited portions of Vengroff fail to disclose determining progress of a distributed business process toward completion, in accordance with the disputed limitation. Vengroff ¶¶ 10, 26, 35. In addition, the Examiner's finding that the disclosed ability to identify unique identifiers and functionalities from remote sources is equivalent to the disputed limitation is unsupported by the record evidence.

Accordingly, we do not sustain the Examiner's § 102 rejections of independent claims 1, 8, and 12, as well as (i) claims 2–11 and 20 and (ii) claims 13 and 14, which depend from one of these independent claims. We also do not sustain the Examiner's § 103 rejection of claims 12–14 because the Examiner relies on the above discussed findings as to the disputed limitation for the rejection.

DECISION

We affirm the Examiner's § 101 rejection of claims 1–14 and 20.

We reverse the Examiner's § 102 rejection of claims 1–11 and 20.

We reverse the Examiner's § 102 rejection of claims 12–14.

We reverse the Examiner's § 103 rejection of claims 12–14.

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