UNITED STATES PATENT AND TRADEMARK OFFICE

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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 CLINT WALTER LORD,
WAYNE WILLIAM PECK,
CHRISTOPHER ANDREW MARK,
and HEATHER LEE MARK

_____

Appeal 2016-005621
Application 13/011,309
Technology Center 3600

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Before ELENI MANTIS MERCADER, ERIC S. FRAHM, and
JOYCE CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1–27, 29–33, and 35–38, which are all of the
claims pending in this application. We have jurisdiction under 35 U.S.C.
§ 6(b).

We affirm.

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[1] According to Appellants, the real party in interest is ProPay, Inc. App. Br.
2.

INVENTION

Appellants' invention relates to facilitating or executing electronic payment transactions. Abstract. Claim 6 reads as follows:

> 6. A system to facilitate an electronic payment transaction comprising:
> a payment management system configured to
> receive a request to initiate a communication session between a merchant terminal and a wireless data connection enabled computing device,
> in response to the request, send identifying information for the communication session to at least one of the merchant terminal and the wireless data connection enabled computing device,
> receive a payment transaction request from the merchant terminal during the communication session after sending the identifying information,
> send the payment transaction request to the wireless data connection enabled computing device during the communication session,
> receive a purchase authorization for the payment transaction request from the wireless data connection enabled computing device,
> send the payment transaction to a payment processor,
> receive an approval of the payment transaction from the payment processor, and
> send notification of the approval of the payment transaction to at least one of the merchant terminal and the wireless data connection enabled computing device to conclude the payment transaction.

REJECTIONS

Claims 1–27, 29–33, and 35–38 stand rejected under 35 U.S.C. § 102(b) as anticipated by Chen et al. (2007/0063017 A1; published Mar. 22, 2007) ("Chen"). Final Act. 10–16.

Claims 1–27, 29–33, and 35–38 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.[2] Ans. 3–5.

ANALYSIS

We have reviewed the rejections of claims 1–27, 29–33, and 35–38 in light of Appellants' arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made, but chose not to make, in the Briefs are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants' arguments are not persuasive of error. We agree with and adopt as our own the Examiner's findings of facts and conclusions as set forth in the Answer and in the Action from which this appeal was taken. We provide the following explanation for emphasis.

Rejection of Claims 1–27, 29–33, and 35–38 under 35 U.S.C. § 102(b)

With respect to independent claim 6, Appellants contend the cited portions of Chen do not disclose the limitation "a payment management system configured to receive a request to initiate a communication session between a merchant terminal and a wireless data connection enabled computing device." App. Br. 4. Appellants argue Figure 3 of Chen does not disclose a request to initiate a communication session between Merchant 315 and Customer 305. *Id.* at 4–5. Appellants further argue the Examiner attempts to define the disputed limitation based on an isolated portion of the Specification. *Id.* at 5 (citing Spec. ¶ 8). Appellants point to a different

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[2] In the Answer, the Examiner entered a new ground of rejection under 35 U.S.C. § 101. *See* Ans. 2–3. Appellants maintained the appeal. *See* 37 CFR § 41.39(b)(2).

portion of the Specification as describing the disputed limitation. *Id.* at 6 (citing Spec. ¶¶ 9–10).

We are not persuaded the Examiner erred. During prosecution, claims must be given their broadest reasonable interpretation while reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The Examiner concluded the disputed limitation is broad enough to encompass the teachings of Chen ¶¶ 42–44. Final Act. 12; Ans. 6–11. Appellants, however, have not persuasively rebutted the Examiner's findings of fact and conclusions by, for example, presenting persuasive argument or objective evidence that the cited paragraphs of Chen do not disclose the limitation at issue, or by showing the Examiner's claim interpretation is overly broad, unreasonable, or inconsistent with the Specification.

Appellants next contend Chen does not disclose "a payment management system configured to . . . receive a payment transaction request from the merchant terminal during the communication session after sending the identifying information," as claim 6 requires. App. Br. 7. Appellants again rely on Figure 3 of Chen in arguing that "ezMobilePay Center 320 receives Charge Transaction Request 335 before—not after—sending Authorization request 350." *Id.* Appellants further argue that the Examiner attempts to define the limitation at issue based on an isolated portion of the Specification. *Id.* at 7–8 (citing Spec. ¶ 15).

Appellants' arguments are not persuasive. The Examiner concluded the disputed limitation is broad enough to encompass the teachings of Chen ¶¶ 27, 42–44, and 48. Final Act. 12; Ans. 6–11. Appellants have not

persuasively rebutted the Examiner's findings or conclusions through persuasive argument, objective evidence, or a showing that the Examiner erred in interpreting the claims.

Regarding independent claim 19, Appellants contend Chen does not disclose the limitation "a wireless data connection enabled computing device configured to . . . receive an approval of the payment transaction to conclude the payment transaction." App. Br. 8. Appellants argue that, based on Chen Figure 3, "Merchant 315—not Customer 305—receives Approval 385." *Id.* Appellants also argue that the Examiner erred in relying on paragraphs 8 and 15 of Appellants' Specification in interpreting the disputed limitation. *Id.* at 9.

Appellants' arguments are not persuasive. The Examiner concluded the disputed limitation is broad enough to encompass the teachings of Chen ¶¶ 43–44. Final Act. 14; Ans. 12. Again, Appellants have not persuasively rebutted the Examiner's findings based on paragraphs 43 and 44 of Chen, or persuaded us that the Examiner's interpretation of the disputed limitation is overly broad, unreasonable, or inconsistent with the Specification.

Regarding claim 33, Appellants contend Chen lacks the limitation "at least one merchant terminal device configured to send non-payment-transaction information for the wireless data connection enabled computing device during the communication session," because Chen is only concerned with securely making payments and deposits. App. Br. 10.

We are not persuaded of error. We agree with the Examiner that Appellants' Specification does not specifically define the limitation "non-payment transaction information." *See* Ans. 13. The Examiner interpreted "non-payment transaction information" as broad enough to encompass

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identifying information disclosed in Chen. *Id.* at 13–14 (citing Chen ¶¶ 42–44). Appellants have not persuasively rebutted the Examiner's findings or shown that the Examiner's claim interpretation is overly broad, unreasonable, or inconsistent with the Specification. *See* Reply Br. 3.

For these reasons, we are not persuaded that the Examiner erred in finding that Chen discloses the disputed limitations of claims 6, 19, and 33.

Accordingly, we sustain the Examiner's 35 U.S.C. § 102(b) rejection of independent claims 6, 19, and 33, as well as the Examiner's 35 U.S.C. § 102(b) rejection of independent claims 1, 11, and 27, which Appellants argue are patentable for similar reasons. App. Br. 10. We also sustain the Examiner's rejection of dependent claims 2–5, 7–10, 12–18, 20–26, 29–32, and 35–38, not argued separately.

Rejection of Claims 1–27, 29–33, and 35–38 under 35 U.S.C. § 101

The Examiner concluded claims 1–27, 29–33, and 35–38 are directed to the abstract idea of "facilitating or executing electronic payment transactions," which is a fundamental economic practice and is similar to concepts that have been identified by the courts as abstract ideas, such as hedging in *Bilski* and mitigating settlement risk in *Alice.* Ans. 4. The Examiner also found the claims do not include additional elements sufficient to amount to significantly more than the judicial exception because the additional elements are simply a generic computer, a wireless data connection enabled computing device, and a computer network performing their generic computer functions. *Id.*

Appellants contend the Examiner erred because "[f]acilitating or executing electronic payment transactions is not abstract in the sense that hedging and mitigating settlement risk may be," and "the devices (and

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associated operation thereof) of infrastructure that connects two parties and permits the flow of electronic value therebetween are not abstract." Reply Br. 2. Appellants also argue the claims do not seek to block all innovation related to electronic payment transactions. *Id.* Appellants further argue that the claims to do not recite mere generic computer function, but rather particular operation that plays a role in improving operation of electronic payment. *Id.* at 2–3.

Appellants' arguments are not persuasive. The Supreme Court in *Alice* identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). The first step is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, the second step is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id.* (internal quotation omitted). 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.* (internal quotations omitted).

Turning to the first step of the *Alice* inquiry, we agree with the Examiner that Appellants' claim 1 is directed generally to "a method to facilitate an electronic payment transaction," which is a fundamental economic practice. *See* Ans. 3–4. It follows from prior Supreme Court cases, and *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) in particular, that the

claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of information exchange between merchants and customers is a fundamental business practice long prevalent in our system of commerce (*see* Spec. ¶ 7) and is a long-used practice to protect the interests held by different parties in data. Thus, information exchange between merchants and customers, like hedging, is an "abstract idea" beyond the scope of §101. *See Alice Corp.*, 134 S. Ct. at 2356.

Moreover, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that "collecting information, analyzing it, and displaying certain results of the collection and analysis" are "a familiar class of claims 'directed to' a patent ineligible concept"); *see also In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d at 611; *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Here, the claims, unlike the claims found non-abstract in prior cases, use generic computer technology to perform data collection, analysis, and processing and do not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they "focused on a specific asserted improvement in computer animation"). As such, the claims are directed to the abstract idea of receiving, analyzing, and processing data.

Appellants have not persuasively shown the claims are not directed to an abstract idea. Appellants argue that that the devices of infrastructure in the claim are not abstract. Reply Br. 2. Appellants, however, offer insufficient persuasive argument or objective evidence to persuade us the Examiner erred. Appellants overlook that the first step in the *Alice*

framework looks to whether the claim is directed to an abstract idea, not whether the claim as whole is simply an abstract idea. Moreover, we are unpersuaded by Appellants' argument that the claims do not preempt every application of some abstract idea and are, therefore, patentable. *See* Reply Br. 2. Lack of preemption does not make the claims any less abstract. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (collecting cases); *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013); *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.").

Turning to the second step of the *Alice* inquiry, we find nothing in the claims that adds anything "significantly more" to transform the abstract concept of facilitating an electronic payment transaction into a patent-eligible application. *Alice*, 134 S.Ct. at 2357. Appellants argue that sending identifying information for a communication session to a merchant terminal and wireless data connection enabled computing device in response to receiving a request to initiate a communication session between the merchant terminal and wireless data connection enabled computing device is not mere generic computer function but rather a particular operation that plays a role in improving operation of electronic payment transaction infrastructure. Reply Br. 2–3.

"[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer." *Alice Corp.*, 134 S.Ct. at 2359. They do not. Appellants have not persuaded us that the contents of what is sent and received in claim 1

amounts to anything more than data. Using a computer to receive data,
determine what data is needed, generate data, store data, and process
payments in the form of data amounts are the most basic functions of a
computer. All of these computer functions, including requesting and
initiating a wireless data connection, are well-understood, routine,
conventional activities previously known to the industry. The claims do not,
for example, purport to improve the functioning of the computer itself. Nor
do they effect an improvement in any other technology or technical field.
Considered as an ordered combination, the computer components of
Appellants' method add nothing that is not already present when the steps
are considered separately.

For these reasons, we are not persuaded the Examiner erred in
concluding claims 1–27, 29–33, and 35–38 are directed to patent-ineligible
subject matter. Accordingly, we sustain the Examiner's rejection of claims
1–27, 29–33, and 35–38 under 35 U.S.C. § 101.

DECISION

We affirm the decision of the Examiner rejecting claims 1–27, 29–33,
and 35–38.

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). *See*
37 C.F.R. § 41.50(f).

AFFIRMED