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 DANIEL IAN FLITCROFT, GRAHAM O'DONNELL, CONOR
LANGFORD, and JAMES CARROLL

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Appeal 2016-005800[1]
Application 10/160,190
Technology Center 3600

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Before BIBHU R. MOHANTY, CYNTHIA L. MURPHY, and
ROBERT J. SILVERMAN., *Administrative Patent Judges.*

MURPHY, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants[2] appeal under 35 U.S.C. § 134 from the Examiner's
rejections of claims 27–47. We have jurisdiction over this appeal under
35 U.S.C. § 6(b).

We AFFIRM.

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[1] An oral hearing was held on October 24, 2017.

[2] "Orbis Patents, LTD is the real party in interest." (Appeal Br. 2.)

STATEMENT OF THE CASE

According to the Appellants, "the present invention provides for business-to-business transactions using financial transaction numbers (e.g., specifically Controlled Payment Numbers (CPNs)) as accounting tools." (Spec. 1.)

Illustrative Claim

27. A method of conducting commerce using controlled payment numbers (CPNs), comprising the steps of:

receiving, by a processor of a computer processing device, a user request for issuance of a CPN, the request including user-defined restrictions on use in a financial transaction for a purchase of goods and/or services and user-defined purchase information, wherein at least part of said user-defined purchase information describes a future purchase of goods and/or services that is not required for the financial transaction;

generating, by the processor, in response to the received request, a unique CPN that (i) constitutes a financial transaction payment instrument, (ii) is limited in use in the financial transaction to the user-defined restrictions on use included in the request, and (iii) constitutes a unique identifier for both the financial transaction and the user-defined purchase information;

creating, in a database connected to the computer processing device, an accounting record for the user-defined purchase information that is (i) identified by the CPN and (ii) links the unique CPN with the user-defined purchase information without requiring merchant involvement;

receiving, in the computer processing device, an authorization request from a merchant whereat a transaction for goods and/or services is initiated with the unique CPN, said authorization request including the unique CPN and transaction information pertaining to the transaction;

based on the unique CPN included in the authorization request, identifying, in the database, the accounting record associated therewith;

transmitting, from the computer processing device, an
authorization notification to the merchant when the transaction
complies with the user-defined restrictions on use that are
linked to the CPN in the identified accounting record for the
user-defined purchase information; and

modifying the accounting record for the user-defined
purchase information to reflect the purchase of goods and/or
services and the transaction information, such that the purchase
of goods and/or services and the transaction information are
linked to the user-defined purchase information and uniquely
identified by the CPN.

Rejections

I.   The Examiner rejects claims 27–47 under 35 U.S.C. § 101 as
failing to recite statutory subject matter. (Final Action 8.)

II.   The Examiner rejects claims 27–47 under 35 U.S.C. § 103(a) as
unpatentable over Franklin[3] and Praisner.[4] (Final Action 9.)

ANALYSIS

Claims 27 and 34 are the independent claims on appeal, with the rest
of the claims on appeal (i.e., claims 28–33 and 35–47) depending directly or
indirectly from independent claim 27. (*See* Appeal Br., Claims App.)

Independent claims 27 and 34 recite steps/operations related to
conducting or facilitating commerce using "controlled payment numbers
(CPNs)." (Appeal Br., Claims, App.) The Appellants define a "CPN" as "a
primary account number, expiry date, and additional verification value" that
is "used instead of the cardholder's 'real' account details in a transaction."

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[3] US 5,883,810 issued March 16, 1999.

[4] US 7,319,986 B2 issued January 15, 2008.

(Spec. 8.) The Appellants also describe a CPN as a "financial transaction number[]" that is used as an "accounting tool[]." (*Id.* at 1.)

Independent claims 27 and 34 more specifically recite, inter alia, "receiving" a "user request" for the CPN that includes "purchase information," "generating" the CPN in response to this request, "creating" an "accounting record" for the purchase information that is identified by the CPN, "receiving" an "authorization request" from a merchant that includes the CPN, "identifying" the accounting record "associated" with the CPN, "transmitting" an "authorization notification" to the merchant, and "modifying" the accounting record such that "transaction information" is "linked" to "purchase information" and "uniquely identified by the CPN." (Appeal Br., Claims App.) Thus, according to the Appellants, "the uniqueness of the CPN" can be "used to unambiguously match [] purchase and payment information." (Spec. 9.)

Rejection I

As discussed above, independent claims 27 and 34 recite the receipt of CPN-related request data; the generation of CPN data; the creation, identification, and modification of CPN-associated record data; and the transmission of CPN-resultant notification data. (*See* Appeal Br., Claims App.) Independent claim 27 requires the CPN-related user request to be received "by a processor of a computer processing device" and requires the CPN-associated accounting record to be created "in a database." (*Id.*) Independent claim 34 requires the above-mentioned receipt, generation, creation, identification, modification, and transmission operations to be carried out when a computer program is "executed by the computer." (*Id.*) According to the Appellants, "[n]aturally," the various methods steps "can

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be carried out on multiple computer, computer systems, and/or computer networks." (Spec. 41).

The Examiner determines that the claims on appeal are directed a "fundamental economic practice" and/or "a method of organizing human activity," and thus are directed to an "abstract idea." (Final Action 8.) The Examiner also determines that the additional elements in the claims amount to no more than "instructions to implement the idea on a computer" and/or "generic computer structure that serves to perform generic computer functions." (*Id.*) More succinctly, the Examiner applies the two-step *Alice* test[5] and determines that the claims on appeal do not pass muster under 35 U.S.C. § 101.

The Appellants argue that the claims on appeal are "**not** directed toward an abstract idea" and/or include "additional recitations that are 'significantly more' than an abstract idea." (Appeal Br. 28; *see also* Reply Br. 9–10.) We are unpersuaded by the Appellants' arguments because, as explained below, when we apply the two-step *Alice* test to the claims on

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[5] In 2014, the Supreme Court decided *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014); and it decision requires us to apply a two-part test for distinguishing a claim to an "abstract idea" from a claim to a "patent-eligible application" of an abstract idea. *Alice*, 134 S. Ct. at 2355 (citations omitted). The first step is to determine if "the claims at issue are directed to a patent-ineligible concept." *Id.* If the claims are determined to be directed to a patent-ineligible concept, then the second step is to determine if "the elements of the claim" contain "an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* at 2357 (citations omitted). The second step of the *Alice* test has been described "as a 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.*, at 2355 (citations omitted).

appeal, we likewise reach the conclusion that they do not pass muster under 35 U.S.C. § 101.

With respect to the first step of the *Alice* test, this step requires a determination of whether the claims at issue are directed to a patent-ineligible concept. We agree with the Examiner that independent claims 27 and 34 are directed to an abstract idea. In our view, the focus of the claims on appeal is on receiving, manipulating (e.g., generating, recording, identifying, modifying, etc.), and transmitting intangible data of a specified content (i.e., accounting data relating specifically to a financial transaction); and therefore fall under the umbrella of information-based abstract ideas.[6]

With respect to the second step of the *Alice* test, this step requires a determination of whether additional claim elements transform the above-identified abstract idea into a patent-eligible application. We agree with the Examiner that the additional elements recited in independent claims 27 and 34 are insufficient, either alone or in an ordered combination, to accomplish this transformation. The additional elements recited in independent claim 27 amount to "a processor of a computer processing device," and "a database connected to the computer processing device." (Appeal Br., Claims App.) These are generic computer components, carrying out operations (e.g., receiving data, generating data, recording data, identifying data, transmitting data, modifying data, etc.) routinely performed by a processing device and database connected thereto. As for independent

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[6] *See, e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–1354 (Fed. Cir. 2016) (When "the focus of the asserted claims" is "on collecting information, analyzing it, and displaying certain results of the collection and analysis," the claims are directed to an abstract idea).

claim 34, as indicated above, it merely recites "a computer" that is caused to "carry out" these routine operations when a computer program is executed. (*Id.*)

The Appellants argue that "the presence of specific details limitations" make "the claim scope narrower than an abstract idea." (Appeal Br. 21.) However, the Appellants do not point with particularity to the claim limitation(s) responsible for this allegedly narrowing effect. Furthermore, although the Appellants' claim language is abundant with accounting terminology (e.g., "user request," "purchase information," "restrictions on use," "transaction information," "accounting record," "authorization request," "authorization notification," "financial transaction payment instrument," etc.), these limitations relate solely to details of the content and/or source of intangible information. Such recitals do not elevate the status of the claimed subject matter beyond that of an abstract idea, under either the first or second step of the *Alice* test.[7]

The Appellants also argue the claims on appeal "address a technological problem associated with the processing performed by electronic financial processing systems" and correspondingly solve "a *technological* problem." (Appeal Br. 24, 27.) Along this same line, the

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[7] *See, e.g., Elec. Power Grp., LLC*, 830 F.3d at 1353–54. In this case, the Federal Circuit held that the claims were directed to "an abstract idea," even though the recited data content and data manipulation related specifically to "electrical power-grid performance." *Id.* The Federal Circuit also held that although "a large portion of the lengthy claims is devoted to enumerating types of information and information sources available within the power-grid environment," "merely selecting information, by content or source, for collection, analysis, and display" did "nothing significant" to distinguish the claimed process from an abstract idea. *Id.*

Appellants argue that the "claimed solution is 'necessarily rooted in computer technology to overcome a problem specifically arising in the realm of computer networks.'" (*Id.* at 24–25.) We disagree. The problem addressed by the Appellants is a principle that is "a fundamental basis of accounting," namely the "matching" of purchase and payment information. (Spec. 1.) And this problem is solved not by technical improvements made to computer components, but rather by an accounting tactic in which a financial transaction number (i.e., intangible data) constitutes "a unique identifier for both the future transaction and the purchase order information." (Appeal Br. 23.)[8]

We further note that, even if the Appellants' claimed concept solves a challenge existing only in a network (e.g., Internet) environment, this alone is insufficient to transform a patent-ineligible abstract idea into patent-eligible subject matter.[9] In this regard, the Appellants do not assert that their

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[8] Independent claims 27 and 34 additionally recite that the user request includes "user-defined restrictions on use in a financial transaction for a purchase of goods and/or service" and that the authorization notification is transmitted to the merchant "when the transaction complies with the user-defined restrictions." (Appeal Br., Claims App.) These restrictions on use appear to address another common transactional-accounting problem, namely insuring that authorization for a transaction is only given in appropriate circumstances. And this problem is likewise solved by the "user defined restrictions on use" being "linked to the CPN." (*Id.*)

[9] In *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014), for example, the patentee argued that its claims were "directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before." However, the recited steps relating to the Internet, "such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet[,]" were insufficient to transform the patent-ineligible abstract

invention resides in a change to accepted or established Internet interactions and events. Rather, any of the recited operations that could be performed within an Internet environment are done for purpose of conveying data to generic computer components that implement the abstract idea of collecting, manipulating, and transmitting intangible information.

The Appellants additionally argue that the claimed subject matter requires a "special purpose" computer. (*See* Appeal Br. 25.) This argument appears to be premised primarily upon the recited computer components being programmed to perform routine operations (e.g., receiving, recording, manipulating, and transmitting data) necessary to accomplish the above-identified abstract idea. The flaw in this argument is that it just another way saying that these computer components are being used to implement an abstract idea. Inasmuch as the recited computer components allow faster processing of larger amounts of data, this is generally true of most computer-implemented processes and, in any event, is not enough to impart patent eligibility.[10]

The Appellants also contend that, due to the sensitive financial nature of the information being handled, generic components could not be

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idea (i.e., offering media content exchange for viewing an advertisement) into patent-eligible subject matter. *Id.* at 715–16. In contrast, in *DDR Holdings, LLC v. Hotels.com, L.P.,* 773 F.3d 1245 (Fed. Cir. 2014), 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.

[10] *See OIP Techs., Inc. v. Amazon.com, Inc.,* 788 F.3d 1359, 1363 (Fed. Cir. 2015) ("[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible").

employed to carry out the computer-implemented steps recited in the claims. (*See* Appeal Br. 26.) For example, according to the Appellants, "specified communication protocols and data formatting standards are required for communication along payment rails." (*Id.*) However, we see no mention in the claims on appeal of protocols, formatting standards, or payment rails. Moreover, the computer components in *Alice* would have been likewise handling sensitive financial information, and this did nothing to sway the direction of the Supreme Court's inventive-concept conclusion.[11]

That being said, we recognize that it is possible for an inventive concept to be found in the arrangement, or ordered combination, of generic computer components.[12] Here, however, the only arrangement recited in the independent claims pertains to the database being "connected to the computer processing device" (Appeal Br., Claims App.), and such a connection is conventional and generic. The claims on appeal do not, for example, recite a network arrangement among the computer system of a buyer, the computer system of a merchant, and the computer systems of transaction-coordinating entities (e.g., the buyer's bank, the issuer's bank, an exchange, a software platform, etc.). Moreover, a network arrangement of these respective computer systems would appear to likewise be conventional

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[11] *See Alice*, 134 S. Ct. at 2359 ("[U]se of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions" is not an inventive concept).

[12] *See Bascom Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) ("[A]n inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces," even if these pieces constitute generic computer, network, and internet components).

and generic in the world of electronic transactions. Insofar as the Appellants claim a variation in the flow pattern of data collection during an electronically processed transaction (e.g., providing pre-purchase purchase information), this does not equate to an inventive arrangement or ordered combination of computer systems.

The Appellants further argue that "there are countless manners in which numbers may be used identify a payment or transaction" which are not encompassed by the claims, and thus preemption is not a risk. (Appeal Br. 22.) However, claims that are otherwise directed to patent-ineligible subject matter cannot be saved by arguing the absence of preemption.[13] Here, preemption concerns are fully addressed and made moot, as the claims are deemed to recite only patent ineligible subject matter under the two-step *Alice* test.

Thus, we sustain the Examiner's rejection of independent claims 27 and 34, and dependent claims 28–33 and 35–47, under 35 U.S.C. § 101.[14]

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[13] *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). ("While preemption may signal patent ineligible matter, the absence of complete preemption does not demonstrate patent eligibility").

[14] As for the dependent claims, they recite details of the informational content of the data (*e.g.*, dependent claims 28–33, 38–40, 42, and 43); the receipt, manipulation, and/or transmission of additional data (*e.g.*, dependent claims 35, 36, 43, 44, 46, and 47), the display of data (*e.g.*, dependent claims 36, 37, 40, and 41), and/or a computer program for performing routine data-handling operations (*e.g.*, dependent claim 45). (*See* Appeal Br., Claims App.) For the same reasons as discussed above in connection with independent claim 27, these recitals are insufficient to elevate the status of the claimed subject matter above an abstract idea; and these recitals are insufficient to transform the claimed subject matter into a patent-eligible application of an abstract idea.

Rejection II

As indicated above, independent claims 27 and 34 recite the receipt of a user request for a CPN. (Appeal Br., Claims App.) Independent claims 27 and 34 also recite that the user request includes purchase information, at least a part of which "describes a future purchase of goods and/or services that is **not required** for the financial transaction." (*Id.*, emphasis added.)

The Examiner finds that Franklin discloses a method of conducting commerce in which a user requests a financial transaction number and a financial transaction number is generated in response to this request. (*See* Final Action 9–10.) The Examiner also finds that Franklin's user request includes purchase information describing a future purchase of goods that is not required for the financial transaction. (*See id.* at 10.)

The Appellants argue that, insofar as Franklin may disclose a user request for a financial transaction number, and insofar as this user request includes purchase information, any so-included information is **required** for the financial transaction. (*See* Appeal Br. 9.) We are persuaded by the Appellants' arguments because, as explained below, the Examiner's findings to the contrary are not sufficiently supported by the record.

In Franklin, "the customer decides to commence an online transaction with the merchant, such as purchasing a product from the merchant." (Franklin, col. 8, ll. 26–28.) The customer then requests a transaction number from his or her bank. (*See id.*, col. 8, ll. 36–45, 57.) The bank's computing system receives the request and "create[s] a transaction number to be used as proxy form the customer account number during the online commerce transaction." (*Id.*, col. 8, ll. 57, 63–65.) Franklin discloses that "[f]or added security, the transaction number can be linked to transaction

information to ensure the number is only used for one specific transaction."
(Franklin, col. 9, ll. 64–66.) To this end, Franklin's system "may **require**
the customer to enter information pertaining to the purchase, like the
purchase price, the model or item number, the merchant name, and the like."
(*Id.*, col. 9, l. 67 – col. 10, l. 3, emphasis added.)

We agree with the Appellants' sentiment that Franklin is, at best,
unclear as to whether the purchase information entered by the customer for
security purposes is required (or not required) for the financial transaction.
Franklin indicates that the bank's computing system "examines any extra
transaction information" before an "authorization reply" is returned to the
merchant. (Franklin, col. 11, ll. 19, 38–39.) As such, it is indeed plausible
that "contrary to the present claims, such [purchase] information *is required
for the transaction to continue*" in Franklin. (Appeal Br. 10.) And the
Examiner does not adequately address why it would have been obvious to
one of ordinary skill in the art to include unrequired purchase information in
Franklin's user request for a transaction number. (*See* Answer 5–6.)

Thus, we do not sustain the Examiner's rejection of independent
claims 27 and 34, and dependent claims 28–33 and 35–47, under
35 U.S.C. § 103.[15]

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[15] The Examiner's further findings with respect to the dependent claims (*see*
Final Action 12–19) do not compensate for the above-discussed deficiency
in the obviousness rejection of independent claim 27.

DECISION

We AFFIRM the Examiner's rejection of claims 27–47 under 35 U.S.C. § 101.

We REVERSE the Examiner's rejection of claims 27–47 under 35 U.S.C. § 103.

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