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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER PRIMBAS and
PHILIP THOMAS STAMATAKY

Appeal 2016-006446
Application 13/046,837
Technology Center 3600

Before MURRIEL E. CRAWFORD, NINA L. MEDLOCK, and PHILIP J. HOFFMANN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellants[1] appeal from the Examiner's rejection of claims 1, 3, 4, 7, 9, 10, and 12–21. We have jurisdiction under 35 U.S.C. § 6(b). Appellants appeared for an oral hearing on January 30, 2018.

We AFFIRM.

According to Appellants, the invention is directed "to a system and method for facilitating cash transactions without the need for a customer to

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[1] According to Appellants, the real party in interest is Omni Investors Group, Inc. Appeal Br. 1.

receive coins as change due from a cash purchase and transaction." Spec. 1, ll. 11–13. Claims 1 and 7 are the only independent claims on appeal. Below, we reproduce claim 1 as illustrative of the appealed claims.

> 1. A method involving a retail cash transaction in which a customer uses physical currency to pay a merchant for goods or services received, in which an amount between 1¢ and 99¢ in coin change is due to the customer and used as payment for credit purchased, the method comprising the steps of:
>
> the customer tendering cash to the merchant as payment for the goods or services and there being an amount of coin change due back to the customer, which amount the customer does not receive in the form of physical coins but rather in the form of a cash purchase of credit equal to the amount of coin change otherwise due;
>
> in a different financial transaction than the cash-tender transaction, debiting, using an electronically readable device physically present at the customer-merchant transaction and in electronic communication with an electronic processor and a financial network, one or more accounts associated with the customer in an amount equal to a tracking fee, which is equal to the entire amount of the cash purchase of credit; and
>
> subsequently crediting to the one or more accounts associated with the customer the sum of both the cash purchase of credit and the tracking fee;
>
> wherein the debiting and crediting steps are performed electronically and the tracking fee reflects both the cash purchase of credit and its transfer into the one or more customer accounts.

REJECTION

The Examiner rejects claims 1, 3, 4, 7, 9, 10, and 12–21 under 35 U.S.C. § 101 as patent-ineligible subject matter.

ANALYSIS

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: "[l]aws of nature, natural phenomena, and abstract ideas" are not eligible for patenting. *See, e.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step analysis previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp.*, 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 the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step, where the elements of the claims are considered "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." *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78).

Regarding the first step of the analysis, the Supreme Court acknowledged, in *Mayo*, that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. Therefore, we look to whether the claims focus on a specific means or method that improves the relevant technology, or instead whether the claims are directed to a result or effect that itself is the

abstract idea, and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Initially, Appellants indicate that, for purposes of this appeal, "[a]ll of the pending claims stand and fall together." Appeal Br. 7. Thus, we choose independent claim 1 for our analysis, and each of the remaining claims stands or falls with claim 1.

With respect to the Examiner's rejection of the claims under § 101, the Examiner determines that

> [c]laim 1 . . . is directed to an abstract idea of facilitating cash transactions without the need for a customer to receive coins as change due from a cash purchase. The concept of facilitating cash transactions can be performed by using a "processor" and is similar to the kind of 'organizing human activity' at issue in Alice Corp. Although the claims are not drawn to the same subject matter, the abstract idea of facilitating cash transactions without the need for a customer to receive coins as change due from a cash purchase is similar to the abstract idea of managing risk (hedging) during consumer transactions (Bilski) and creating a contractual relationship (buySAFE).

Answer 6 (underlining omitted). The Examiner also determines that the claims fails to recite additional elements that transform the claim into a patent-eligible application, stating that although the claims recite

> the additional limitations of an electronic processor, a credit or debit card, a card reader[,] and [a] financial network[, these] generic components are claimed to perform their basic functions of debiting one or more accounts associated with the customer, [and] crediting one or more accounts associated with the customer through the program that enables the facilitating of cash transactions. The recitation of the claimed limitations amounts to mere instructions to implement the abstract idea on a processor. Taking the additional elements individually and in combination, each step of the process performs purely generic computer functions. . . . The claims do not include additional

> elements that are sufficient to amount to significantly more than the judicial exception[,] because the additional elements are simply a generic recitation of a computer processor performing its generic computer functions.

Id. at 6–7.

Based on our review, we agree with the Examiner's findings and conclusions regarding the claims, as set forth above. Conversely, we are not persuaded of Examiner error by any of Appellants' arguments. *See* Appeal Br. 7–12. Thus, we sustain the Examiner § 101 rejection of claims 21–40.

Appellants' first argument is that, with reference to their claimed invention, "the building blocks of cash transactions and electronic transactions are transformed into a cash management and accounting service that achieves a coinless result when coin change is due." Appeal Br. 8. We are not persuaded by Appellants, however. It follows from prior Supreme Court cases, and *Bilski* (*Bilski v Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the Appellants' claimed concept of crediting and debiting accounts, albeit in a specific way (Appeal Br., Claims App. (Claim 1)), is a fundamental business practice long prevalent in our system of commerce. Account crediting and debiting are also building blocks of banking. Thus, the particular claimed method of account crediting and debiting, like hedging, is an "abstract idea" beyond the scope of §101. *See Alice Corp.*, 134 S. Ct. at 2356.

As in *Alice Corp.*, we need not labor to delimit the precise contours of the "abstract ideas" category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of account crediting and debiting at

issue here. Both are squarely within the realm of "abstract ideas" as the Court has used that term. *See Alice Corp.*, 134 S. Ct. at 2357.

Further, claims that only recite steps directed to data collection, analysis, and display, such as occurs in Appellants' claim 1, 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 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Further, Appellants' claim 1, unlike claims found patent eligible in prior cases, uses generic computer technology to perform data collection and analysis that is used for account crediting and debiting, and does 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, Appellants' claim 1 is "directed to" an abstract idea in accordance with the first step of the *Alice* analysis. *Alice Corp.*, 134 S. Ct. at 2355.

Appellants' claim 1 also does not recite additional features that "'transform . . . the claim' into a patent-eligible application" in accordance with *Alice's* second step, inasmuch as Appellants' claimed method is implemented with generic computer technology. *See Alice Corp.*, 134 S. Ct. at 2358 ("[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.").

For reasons similar to those discussed above, we are not persuaded by Appellants' arguments that "the invention involves an electronic purchase which is transformed in an innovative new way using a 'tracking fee' never used in this way in this environment, which certainly provides 'significantly more' than the conventional electronic purchase" (Appeal Br. 8) or that "a conventional electronic purchase/transaction is transformed using a "tracking fee," a corresponding electronic network, and a novel accounting method" (*id.* at 9). Again, Appellants' claim 1, unlike claims found patent eligible in prior cases, uses generic computer technology to perform data collection and analysis that is used for account crediting and debiting, rather than reciting an improvement to a particular computer technology. *See Alice Corp.*, 134 S. Ct. at 2358.

Finally, Appellants argue that *Bancorp* and *DDR Holdings* establish that claim 1 is patent eligible. Appeal Br. 10–12. We are not persuaded by Appellants' arguments. As the Board indicated in *Bancorp* (*Bancorp v. Solutran, Inc.*, CBM2014-00076 (PTAB Aug. 7, 2014), 8) "the basic, core concept of independent claim 1 is a method of processing paper checks, which is more akin to a physical process than an abstract idea." Appellants' claim 1, however, does not process a physical check, but rather is directed to electronic crediting and debiting of accounts in lieu of providing physical currency (i.e., coins). In *DDR Holdings* (*DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), the Federal Circuit determined that, although the patent claims at issue involved conventional computers and the Internet, the claims addressed a challenge particular to the Internet, i.e., 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. *DDR Holdings*, 773 F.3d at 1257. The Court, thus, held that those claims were directed to statutory subject matter because they recite a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *Id.* No such technological advance is evident in the claimed invention. More specifically, unlike the situation in *DDR Holdings*, Appellants do not identify any problem particular to computer networks and/or the Internet that the claims allegedly overcome.

DECISION

We AFFIRM the Examiner's claims 1, 3, 4, 7, 9, 10, and 12–21 under 35 U.S.C. § 101 as patent-ineligible subject matter.

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