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EXAMINER

AKINTOLA, OLABODE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN CAMPBELL HULL, ALAN DOUGLAS WHITE,
MICHAEL GOOCH, and MATTHEW WOODHAMS

Appeal 2016-007187
Application 12/907,765
Technology Center 3600

Before CARL W. WHITEHEAD JR., AMBER L. HAGY, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 15, 17, and 19–42. Claims 1–14, 16, and 18 have been cancelled. App. Br. 9–10. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellants identify GFI Group, Inc., as the real party in interest. App. Br. 3.

STATEMENT OF THE CASE

Appellants' invention is directed to an apparatus, method and system for determining credit derivative indices. Spec. 1. Claim 15, reproduced below, is representative of the claimed subject matter:

15. A method for determining at least one estimated financial attribute of at least one entity of a population, the method comprising:

providing financial attribute data for entities of the population, wherein the financial attribute data is for a period of time, and the period of time includes a particular day and prior days;

determining, using a processor arrangement, a conditional index for the particular day and for a particular entity based on a relationship of prior conditional indices, actual financial attribute data for the particular day and actual financial attribute data for the prior days by calculating a maximum likelihood estimator for the conditional index for the particular day;

determining, using a processor arrangement, an unconditional index representing an average level of the financial attribute data for the entities of the population; and

determining, using a processor arrangement, the at least one estimated financial attribute for the at least one entity based on the unconditional index;

wherein an entity is considered if it satisfies the following conditions: (1) the entity is currently a member of the population of interest; and (2) the entity was a member of the population at the time of the most recent observation on the entity, and

wherein the unconditional index is determined by averaging the attribute across both actual observations and estimated observations of the attribute that satisfy both of the conditions.

REJECTIONS

Claims 15, 17, and 19–42 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception to statutory subject matter.

ANALYSIS

Appellants argue all claims together, so we select independent method claim 15 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

To determine whether a claim is eligible under § 101, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). If it is, we then “consider the elements of each 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.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)).

The Examiner determines the claims are directed to the fundamental economic practice “of determining financial attribute of an entity of a population” and are also “a mental process that could be performed in the human mind, or by a human using a pen and paper.” Ans. 2. In addition, the Examiner determines the claims merely add a generic processor that performs its basic functions, which does not amount to significantly more than the abstract idea. Ans. 2–3.

With regard to step 1 of the *Alice* analysis, Appellants argue “‘determining financial attribute of an entity of a population’ is not abstract at all but is a concrete action with a tangible result.” Reply Br. 2. According to Appellants, “[b]eing able to be performed by mind or with pen

and paper is not relevant to whether an idea is an idea of itself.” Reply Br. 3. Appellants further argue, “the Examiner makes no allegation regarding long prevalence at all [and i]f ‘determining financial attribute of an entity of a population’ were long prevalent, the[n] certainly, the Examiner could have found a prior art rejection of the claims.” Reply Br. 2; *see also* App. Br. 8. Appellants also argue that because “[c]redit derivatives were invented only as recently as [t]he 1990s, a mere ten years before the filing of this application” then “the claims are not directed to something that was long prevalent.” Reply Br. 3.

We disagree with Appellants’ arguments. Claim 15 recites three different types of steps: (1) providing data; (2) determining an index; and (3) determining a financial attribute. Each of these steps involves either gathering or manipulating information—in particular, financial attribute data, which is provided and used to determine a conditional index, an unconditional index, and an estimated financial attribute. On the record before us, Appellants dispute the claims are directed to an abstract idea because they are directed to “a concrete action with a tangible result,” which is “not an idea of itself,” and “are not directed to something that was long prevalent.” Reply Br. 2–3; App. Br. 8. Appellants do not explain what “tangible result” is accomplished by the claims. Indeed, although a conditional index, unconditional index, and estimated financial attribute are *determined*, the claims do not *do* anything with this information, short of displaying the information (as recited in dependent claim 42). Information collection and analysis, including when limited to particular content, is within the realm of abstract ideas. In that regard, the claims here are similar to those in *Electric Power Group*, which recited “receiving” data, “detecting

and analyzing” events from that data, and “displaying” the results. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016). The Federal Circuit affirmed that those claims were directed to ineligible subject matter under § 101, explaining:

Information as such is an intangible. Accordingly, we have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas. In a similar vein, we have treated analyzing information by steps people go through in their minds . . . , without more, as essentially mental processes within the abstract-idea category. And we have recognized that merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.

Id. (citations omitted); *see also Content Extraction & Trans. LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“The concept of data collection, recognition, and storage is undisputedly well-known. Indeed, humans have always performed these functions.”).

Moreover, we agree with the Examiner (*see* Ans. 2), and Appellants have not persuasively rebutted, that the steps of the method can be performed by a human with the use of pen and paper. 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.”); *see also Intellectual Ventures ILLC v. Symantec Corp.*, 838 F.3d

1307, 1318 (Fed. Cir. 2016). Additionally, mental processes, e.g., making determinations as recited in independent claim 15, remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *CyberSource Corp.*, 654, F.3d 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.*”).

Appellants’ argument that the pending claims are patent eligible because there are no pending obviousness or novelty rejections of the claims (App. Br. 8) is likewise not persuasive because it improperly conflates the requirements for eligible subject matter (§ 101) with the independent requirements of novelty (§ 102) and obviousness (§ 103). “The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of the claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–189 (1981). A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Turning to the second step of the *Alice* analysis, Appellants argue “[t]he Examiner has provided no evidence that these limitations are not substantially more than ‘determining financial attribute of an entity of a population.’” Reply Br. 4. According to Appellants, “[t]o make findings of fact, the Examiner must present substantial evidence showing that such limitations are well-understood, routine and conventional activities previously known in the industry.” Reply Br. 5; *see also* App. Br. 7–8.

We agree with the Examiner (*see* Ans. 2) that claim 15 adds a “processor arrangement,” i.e., a generic computer component, which does not satisfy the inventive concept. *See* Spec. 9 (“[t]he exemplary method may be implemented in software using a suitably appropriate processor arrangement”); Spec. 11 (“[t]he processor arrangements of the system may include a personal computer, a computer network, a wireless computer or processor device or arrangement (such as, for example, a PDA) or a wireless computing network, or any other suitably appropriate processor arrangement”); Spec. Fig. 2. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea ‘while adding the words ‘apply it’” is not enough for patent eligibility.” *Alice*, 134 S. Ct. 2358 (citation omitted).

Appellants have presented no evidence to establish otherwise, nor have Appellants explained how the claims are performed such that they are not routine, conventional functions of a generic computer. To the extent Appellants contend that the Examiner is required to provide such evidence, the law is clear that there is no such requirement. *See, e.g., In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (holding that the PTO carries its procedural burden of establishing a *prima facie* case when its rejection satisfies the notice requirement of 35 U.S.C. § 132). The claims at issue do not require any nonconventional computer or display components, or even a “non-conventional and non-generic arrangement of known, conventional pieces,” but merely call for performance of the claimed information providing and determining steps “on a set of generic computer components.” *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016).

Because claim 15 is directed to an abstract idea and nothing in the claims adds an inventive concept, the claims are not patent-eligible under § 101. We find no meaningful distinction between independent method claim 15 and independent system claim 17 and independent medium claim 19; the claims all are directed to the same underlying invention. 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)).

Therefore, we sustain the Examiner’s rejection of claims 15, 17, and 19–42 under 35 U.S.C. § 101.

DECISION

The Examiner’s rejection of claims 15, 17, and 19–42 is 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