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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RENE A.A. STIJEN and STEVEN ROBERT SHIRLEY

Appeal 2016-007203¹
Application 13/785,318²
Technology Center 3600

Before MURRIEL E. CRAWFORD, WILLIAM V. SAINDON, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ We make reference to the Specification (“Spec.,” filed Mar. 5, 2013), Appeal Brief (“Appeal Br.,” filed Dec. 18, 2015), and Reply Brief (“Reply Br.,” filed July 19, 2016), as well as the Examiner’s Answer (“Ans.,” mailed May 19, 2016) and Final Office Action (“Final Act.,” mailed July 28, 2015).

² According to the Appeal Brief, the real party in interest is MasterCard International Incorporated. Appeal Br. 2.

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant³ appeals from the Examiner's decision to reject claims 1–4, 6–15, and 17–22. We have jurisdiction under § 6(b).

We AFFIRM.

SUBJECT MATTER ON APPEAL

The invention “relates to methods and systems for providing integrated electronic commerce marketplace and settlement functionality, specifically increasing the efficiency throughout the supply chain by integrating an electronic commerce marketplace with a payment card processing network.” Spec. ¶ 2. Claims 1 and 12 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for facilitating a market transaction, comprising:
 - storing, in a database, a plurality of quote data entries, wherein each quote data entry includes data related to a supplier quote for goods or services and is associated with a supplier;
 - receiving, by a receiving device, a purchase order for goods or services, wherein the purchase order identifies a supplier;
 - transmitting, by a transmitting device, the purchase order to the supplier identified in the purchase order;
 - receiving, by the receiving device, an invoice corresponding to the purchase order;
 - identifying, by a processing device, a virtual payment number;

³ We use the term “Appellant” herein to refer to any and all appellants collectively.

transmitting, by the transmitting device, the virtual payment number to the supplier for funding of a financial transaction based on the invoice;

receiving, by the receiving device, transaction data for the financial transaction; and

mapping the received transaction data to the purchase order.

REFERENCES

The Examiner relies on the following prior art in rejecting the claims on appeal:

Singh	US 2001/0047311 A1	Nov. 29, 2001
Baher	US 2011/0137748 A1	June 9, 2011
Lovelett et al. (“Lovelett”)	US 2014/0324687 A1	Oct. 30, 2014

REJECTIONS

The Examiner rejects the claims on appeal as follows:

- I. claims 1–4, 6–15, and 17–22 under 35 U.S.C. § 101 as non-statutory subject matter;
- II. claims 1, 2, 4, 6–13, 15, and 17–22 under 35 U.S.C. § 103(a) as unpatentable over Singh and Baher; and
- III. claims 3 and 14 under 35 U.S.C. § 103(a) as unpatentable over Singh, Baher, and Lovelett.

ANALYSIS

Rejection I: Non-Statutory Subject Matter

Appellant argues claims 1–4, 6–15, and 17–22 as a group. Appeal Br. 5–9; Reply Br. 2–6. We select independent claim 1 as

representative. The remaining claims of the group stand or fall with independent claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

An invention is patent eligible if it is a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted 35 U.S.C. § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)).

To “distinguish[] patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts,” the Supreme Court has provided a two-step framework. *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012)). The first step considers whether a claim is directed to a patent-ineligible concept, e.g., an abstract idea. *Id.* (citing *Mayo*, 132 S. Ct. at 1296–97). If so, the second step then considers whether the claim recites an inventive concept—an element or combination of elements sufficient to ensure the claim amounts to significantly more than the abstract idea and transform the nature of the claim into a patent-eligible application. *Id.* (citing *Mayo*, 132 S. Ct. at 1294, 1297–98).

In rejecting independent claim 1 under 35 U.S.C. § 101, the Examiner analyzes the claim using this two-step framework. Final Act. 2–3. Pursuant to the first step, the Examiner determines the claim is directed to “electronic commerce marketplace and settlement,” which the Examiner determines is a fundamental economic practice and, therefore, an abstract idea. *Id.* at 2.

Under the second step, the Examiner determines the claim does not recite significantly more than the abstract idea because the additional elements, considered alone or in combination, amount to no more than “mere instructions to implement the abstract idea on a computer” or “recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.” *Id.* at 3.

At the outset, we are not persuaded of Examiner error by Appellant’s argument that independent claim 1 does not preempt others from using the abstract idea of “electronic commerce marketplace and settlement.” Appeal Br. 6–7. Although preemption may be the basis for excluding abstract ideas from eligible subject matter, it is not the test for determining whether a claim is patent eligible. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability. . . . For this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” (citation omitted)).

Under the first step of the analysis, Appellant contends that the Examiner overgeneralizes independent claim 1 by omitting key features. Reply Br. 3–4. Appellant, however, does not explain, and we fail to see, how the omitted claim features change the character of the claim as a whole being directed to “electronic commerce marketplace and settlement.” *See Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015) (“Under step one of *Mayo/Alice*, the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.”).

Here, independent claim 1 recites a method “for facilitating a market transaction,” and the steps of the claim result in a completed transaction. Moreover, the Specification explains that the invention provides “integrated electronic commerce marketplace and settlement functionality.” Spec. ¶ 2. As such, Appellant does not apprise us of error in the Examiner’s determination that the claim is directed to “electronic commerce marketplace and settlement.”

Appellant also asserts the Examiner has not shown that “electronic commerce marketplace and settlement” is similar to a concept that the courts have identified as an abstract idea. Reply Br. 5. We disagree. Contrary to Appellant’s assertion, the Examiner determines “electronic commerce marketplace and settlement” is a fundamental economic practice (Final Act. 2), which is a concept the courts have routinely held to be an abstract idea. *See, e.g., Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (“[T]he patent claims here are directed to a fundamental economic practice, which *Alice* made clear is, without more, outside the patent system.”).

Seeing no error in the Examiner’s determination that independent claim 1 directed to an abstract idea pursuant to the first step of the *Alice* analysis, we turn to Appellant’s arguments under the second step. Appellant contends the claim recites significantly more than the abstract idea because it recites using a virtual payment number unique to a transaction to complete the transaction, as well as mapping the completed transaction to the underlying purchase order using the virtual payment number. Appeal Br. 6. Appellant’s argument is not convincing.

The second step of the *Alice* analysis considers “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.” *Alice*, 134 S. Ct. at 2355 (emphasis added) (quoting *Mayo*, 132 S. Ct. at 1298, 1297). Using a virtual payment number and mapping the completed transaction to the purchase order further describe the abstract idea of “electronic commerce marketplace and settlement,” and, therefore, do not transform the nature of the claim into a patent-eligible application.

Appellant also asserts independent claim 1 recites additional limitations that, as an ordered combination, amount to significantly more than the abstract idea. Appeal Br. 8. In doing so, Appellant relies on the steps of receiving a purchase order, transmitting the purchase order to a supplier, receiving a corresponding invoice from the supplier, identifying a virtual payment number for that invoice, transmitting the virtual payment number to the supplier for funding a transaction based on that invoice, receiving transaction data for the transaction, and then mapping the transaction data to the purchase order. *Id.* Appellant’s argument is not persuasive of error.

As set forth above, the second step of the *Alice* analysis considers whether the additional elements of a claim transform the nature of the claim into a patent-eligible application. *Alice*, 134 S. Ct. at 2355 (citation omitted). Here, Appellant does not explain how these steps, as an ordered combination, transform the nature of the claim into something other than the abstract idea of “electronic commerce marketplace and settlement.” To the contrary, these steps simply describe the abstract idea.

Appellant further argues independent claim 1 recites significantly more than the abstract idea because the claimed invention uses computer technology to overcome a problem specifically arising in the realm of computer networks and electronic commerce marketplace and settlement, namely “mapping of a purchase order to a financial transaction that has been processed as related to that purchase order, where a single real account number may be used to fund an overwhelmingly large number of transactions, making mapping of the transactions to purchase orders unfeasible.” Appeal Br. 7. As Appellant’s argument demonstrates, however, the problem is the inability to map a purchase order to a financial transaction when a single real account number is used, not a problem specifically arising in the realm of computer networks and electronic commerce marketplace and settlement.

Appellant additionally contends independent claim 1 recites significantly more than the abstract idea because it is “not claiming a business method *per se*, but instead providing a technical method of mapping transaction data to the purchase order based on [the virtual payment number].” Reply Br. 6. Appellant’s argument is not persuasive of error. Here, the claim recites various computing components. According to the Supreme Court, however, “[g]iven the ubiquity of computers, wholly generic computer implementation is not generally the sort of ‘additional featur[e]’ that provides any ‘practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.’” *Alice*, 134 S. Ct. at 2358 (citation omitted) (quoting *Mayo*, 132 S. Ct., at 1297). As such, the Court explained that “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract

idea . . . on a generic computer.” *Id.* at 2359. Appellant’s simple assertion that the claim provides a “technical method” does not distinguish the claim from the generic computer implementation of the abstract idea.

In view of the foregoing, Appellant does not apprise us of error in the Examiner’s determination that independent claim 1 is patent-ineligible. Accordingly, we sustain the rejection of independent claim 1 with claims 2–4, 6–15, and 17–22 falling therewith.

Rejection II: Obviousness based on Singh and Baher

As an initial matter, we are not persuaded of error by Appellant’s contention that the Final Office Action does not comply with MPEP § 707.07(f) because the Examiner failed to respond to all of the arguments. Appeal Br. 9–11. The Examiner’s alleged failure to follow the examination guidelines set forth in the MPEP invokes the supervisory authority of the Director and is reviewable by petition, not appeal. 37 C.F.R. § 1.181.

Appellant also argues that Singh does not disclose “receiving . . . transaction data for the financial transaction,” as recited in independent claim 1 and similarly recited in independent claim 12.

Appeal Br. 11–13; Reply Br. 6–7. According to Appellant:

“[T]ransactions” in Singh consist of the matching of a buyer to a supplier, without any *additional* data regarding a *financial* transaction being retrieved or obtained in any way. Once the procurement transaction is set up by the system in Singh, the only additional actions that are performed are delivery actions. As such, there is no suggestion in Singh of receiving transaction data for the *financial transaction*, as recited in the appealed claims.

Appeal Br. 12. Appellant’s argument is not convincing.

In addition to matching a buyer to a supplier, Singh's method "includes *executing*, by a processor connected with the website and according to inputs transmitted to the website from a user associated with the matched purchase order and/or quote, *an electronic transaction with data from the matched purchase order and quote.*" Singh ¶ 19 (emphasis added). Singh also discloses "[t]he invention allows the buyer to receive quotes from a virtually unlimited number of suppliers, *and then to negotiate and conclude the transaction entirely online.*" Singh ¶ 27 (emphasis added). Singh further discloses "the transaction system **111** also includes a database server **124** connected with a database **130** for long-term archival of transaction data, and a transaction server **126** for executing a transaction program on data stored in the database **130** and accessible from the database server **124.**" Singh ¶ 35.

Although Singh does not explicitly disclose receiving transaction data, Singh discloses executing transactions online with data from the matched purchase order and quote, as well as archiving transaction data. A person of ordinary skill in the art would have understood that in order to execute transactions online and to archive transaction data, Singh's transaction system receives transaction data. *See In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962) (explaining that persons skilled in the art "must be presumed to know something" about the art "apart from what the references disclose"). Appellant, therefore, does not apprise us of error in the Examiner's finding that Singh discloses receiving transaction data for the financial transaction, as required by independent claims 1 and 12. Final Act. 4–5; Ans. 6–7.

Appellant further argues Singh does not disclose "mapping the received transaction data to the purchase order," as recited in independent

claim 1 and similarly recited in independent claim 12. Appeal Br. 13–14. Per Appellant, “Singh fails to disclose or suggest obtaining financial transaction data, and therefore is unable to map financial transaction data to a purchase order.” *Id.* at 14. We, however, do not find Appellant’s argument persuasive of error because, as we explained above, Appellant does not apprise us of error in the Examiner’s finding that Singh discloses receiving transaction data.

Appellant additionally argues that Singh fails to disclose this limitation because “no matching in Singh occurs following the execution of the transaction, and therefore no matching can be made of the purchase order to the transaction data.” Appeal Br. 13–14. Appellant’s argument, however, is not commensurate with the scope of the claims. Namely, Appellant suggests that transaction data does not exist before a transaction is executed, but the claims are not so limited. The claims do not define “transaction data.” Moreover, the Specification uses “transaction data” to describe data associated with a transaction. Spec. ¶ 39 (“Transaction data may include a transaction amount, the transaction time and/or date, an invoice number, a purchase order, the [virtual payment number] used for payment, etc.”). Here, as the Examiner finds, Singh’s system matches purchase orders and supplier quotes. Final Act. 5–6 (citing Singh ¶¶ 46, 51). Like the “transaction data” described in the Specification, supplier quotes are part of a transaction between a purchaser and a supplier. Accordingly, we determine that supplier quotes fall within the broadest reasonable interpretation of “transaction data.” Appellant, therefore, does not apprise us of error in the Examiner’s finding that Singh discloses mapping the received

transaction data to the purchase order, as recited in independent claims 1 and 12.

In view of the foregoing, Appellant does not apprise us of error in the Examiner's rejection of independent claims 1 and 12, and we, therefore, sustain the Examiner's rejection of these claims. Appellant does not present arguments for the dependent claims 2, 4, 6–11, 14, 15, and 17–22 apart from the arguments for the independent claims. Accordingly, we similarly sustain the Examiner's rejection of these dependent claims.

Rejection III: Obviousness based on Singh, Baher, and Lovelett

Appellant contends that Lovelett is not available as prior art.

Reply Br. 7. Appellant is correct that common ownership may disqualify a reference as prior art for purposes of 35 U.S.C. § 103. Namely, in accordance with 35 U.S.C. § 103(c)(1), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of § 102, “shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” Lovelett appears to be prior art only under § 102(e), and, therefore, would not be available as prior art for this rejection under § 103 upon a sufficient showing that Lovelett and the claimed invention, were, at the time the claimed invention was made, commonly owned or subject to an obligation to be commonly owned.

Appellant, however, makes this argument for the first time in the Reply Brief. Consequently, this argument is untimely, and is waived here in the absence of any showing of good cause why the argument could not have

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been timely presented in Appellant's Appeal Brief. 37 C.F.R. § 41.41(b)(2); *see also In re Hyatt*, 211 F.3d 1367, 1373 (Fed. Cir. 2000) (noting that an argument not first raised in the brief to the Board is waived on appeal).

In view of the foregoing, Appellant does not apprise us of error in the Examiner's rejection of claims 3 and 14. We, therefore, sustain the Examiner's rejection of these claims.

DECISION

The Examiner's decision to reject claims 1–4, 6–15, and 17–22 under 35 U.S.C. § 101 is affirmed.

The Examiner's decision to reject claims 1–4, 6–15, and 17–22 under 35 U.S.C. § 103(a) 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). 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED