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 DIANNA L. SERIO and
FELICE J. KESSELRING

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Appeal 2016-007274[1]
Application 13/896,053[2]
Technology Center 3600

_____

Before HUBERT C. LORIN, ANTON W. FETTING, and
MATTHEW S. MEYERS, *Administrative Patent Judges.*

MEYERS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–3, 5, 6, 8–11, and 13. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Our Decision references Appellants' Appeal Brief ("Appeal Br.," filed January 11, 2016) and Reply Brief ("Reply Br.," filed July 19, 2016), the Examiner's Answer ("Ans.," mailed May 26, 2016), and Final Office Action ("Final Act.," mailed October 1, 2015).
[2] Appellants identify CoreLogic Solutions LLC, as the real party in interest (Appeal Br. 1).

CLAIMED INVENTION

Appellants' claims relate generally "to data processing methods for automatically mining and analyzing information associated with mortgages, property owners, and properties" (Spec. ¶ 2).

Claims 1 and 9 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal:

> 1.   A computer-implemented process of identifying properties owned by an individual, the process comprising:
>
> (a) receiving, via a user interface, input specifying a name and social security number of the individual;
>
> (b) searching, by processor execution of program instructions, a plurality of data repositories for properties associated with the name and social security number, said plurality of data repositories including a data repository of credit header data and a data repository of aggregated loan data, said credit header data representing non-financial information maintained by one or more credit bureaus, said aggregated loan data representing mortgage loans offered by a plurality of lenders;
>
> (c) for each property identified in step (b), assessing, based at least partly on public recorder data that comprises property sales transaction data, whether the property is currently owned by the individual, said assessing comprising, by processor execution of a name matching algorithm that accounts for name variations, comparing the name of the individual to buyer and seller names included in the sales transaction data associated with the property to assess the individual's past and present ownership of the property; and
>
> (d) for at least a first property identified in step (b), executing a mailing address search for other properties whose mailing address matches an address of the first property, to thereby search for other properties potentially owned by the individual;

wherein steps (a)–(d) are performed by a computerized analytics system that comprises one or more computing devices.

REJECTION

Claims 1–3, 5, 6, 8–11, and 13 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

Independent claim 1 and dependent claims 2, 3, 5, 6, and 8

Appellants argue claims 1–3, 5, 6, and 8 as a group (*see* Appeal Br. 4–9). We select claim 1 as representative. Claims 2, 3, 5, 6, and 8 stand or fall with independent claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Alice Corp. Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101.

According to *Alice* step one, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

> The "directed to" inquiry []cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon—after all, they take place in the physical world. *See Mayo*, 132 S. Ct. at 1293 ("For all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.") Rather, the "directed to" inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether "their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015); *see Genetic Techs. Ltd. v.*

> *Merial L.L.C.*, 818 F.3d 1369, 1375 (Fed. Cir. 2016) (inquiring
> into "the focus of the claimed advance over the prior art").

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). "The

'abstract idea' step of the inquiry calls upon us to look at the 'focus of the

claimed advance over the prior art' to determine if the claim's 'character as a

whole' is directed to excluded subject matter." *Affinity Labs of Texas, LLC

v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citing *Elec. Power

Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *Enfish*, 822

F.3d at 1335.

In rejecting the claims under 35 U.S.C. § 101, the Examiner

determines that the claims, considered as a whole, are directed to "a concept

of searching, assessing and comparing known information to identify

properties owned by an individual to mitigate risk for a loan" (Final Act. 4;

see also Ans. 3). More particularly, the Examiner determines the claims are

directed to

> [m]anaging risk for a mortgage loan [which] has been in
> widespread use[] in the banking industry and is considered to be
> a good business practice (fundamental economic practice), []
> loan information processing (a method of organizing human
> activity), and a process of collecting and comparing known
> information (an idea of itself).

(Ans. 3–4).

In response, Appellants argue that the Examiner "grossly

mischaracterizes and oversimplifies claim 1," and as such, errs by

"disregard[ing] significant portions of the claim, and oversimplif[ying] the

claimed subject matter in an attempt to characterize the invention as an

abstract idea" (Appeal Br. 4–5; *see also* Reply Br. 1–2). However, we agree

with the Examiner that the claims are directed broadly to the abstract idea of

"searching, assessing and comparing known information to identify properties owned by an individual to mitigate risk for a loan" (Final Act. 4). And, to the extent Appellants argue that the Examiner erred in adequately supporting this determination by providing support or citation (*see* Appeal Br. 4–6), Appellants' argument is unpersuasive.

There is no requirement that the Examiner must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, para. IV "July 2015 Update: Subject Matter Eligibility" to 2014 Interim Guidance on Subject Matter Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) ("The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be *a question of law*. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.") (Emphasis added). We agree that evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. Based on the above analysis set forth by the Examiner, we are unpersuaded it is necessary in this case.

Instead, we need only look to other decisions where similar concepts were previously found abstract by the courts. *See Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) ("Instead of a definition [for what an 'abstract idea' encompasses], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.")

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To that end, as noted above, the Examiner determines the claims are directed to "searching, assessing and comparing known information to identify properties owned by an individual to mitigate risk for a loan" (Final Act. 4). Broadly, we agree that the Examiner is correct in articulating that the claims are directed to an abstract idea.

Accordingly to the Specification, a problem in the mortgage industry is that mortgage lenders "often enter into mortgage-related transactions without accurate ownership data that allows them to properly investigate of the accuracy of representations made by the other entities involved" (Spec. ¶ 3). The Specification identifies that this problem leads to "risky investments that have resulted in significant monetary losses due to decreased profitability or material misrepresentation related to defaulted loans" (*id.*). To address this problem, the Specification discloses processes "for efficiently mining and analyzing information associated with particular mortgage loans, borrowers and properties" (*id.* ¶ 4) by using "us[ing] property-related data aggregated from multiple sources and jurisdictions to, among other tasks, assess property ownership" (*id.*). And, taking independent claim 1 as representative, we agree with the Examiner that claim 1

> recites a series of steps for receiving the information input of an individual such as a name and social security number, searching data repositories to identify properties owned by the individual, assessing identified properties based on public record data, and executing mailing address search for other properties potentially owned by the individual.

(Ans. 3; *see also* Final Act. 4).

Thus, we agree with the Examiner that independent claim 1 is directed to "searching, assessing and comparing known information to identify

properties owned by an individual to mitigate risk for a loan" (Final Act. 4;
see also Ans. 3), and at a higher level directed to "[m]anaging risk for a
mortgage loan" (Ans. 3–4). Furthermore, we agree with the Examiner that
the claims are "directed to" a fundamental economic practice and method of
organizing human activity, in that they are similar to the concept of
intermediated settlement in *Alice*, and the concept of risk hedging in *Bilski v.
Kappos*, 561 U.S. 593 (2010), and, thus, is an abstract idea beyond the scope
of § 101. *See Alice Corp.*, 134 S.Ct. at 2356; *see also Bilski*, 561 U.S. at
611.

We also note the claimed steps for "receiving" identifying
information, "searching" databases for properties associated with the
identifying information, "assessing . . . whether the property is currently
owned by the individual . . . [using] a name matching algorithm . . . to assess
the individual's past and present ownership of the property," and "executing
a mailing address search for other properties whose mailing address matches
an address of the first property, to thereby search for other properties
potentially owned by the individual" accomplish little more than collecting
data, analyzing the data, and then presenting the data based on the analysis,
and is similar to the steps that the Federal Circuit determined were patent
ineligible in *Electric Power Grp., LLC v. Alstom S.A., Grid, Inc.*, 830 F.3d
1350 (Fed. Cir. 2016). In *Electric Power*, the method claims at issue were
directed to performing real-time performance monitoring of an electric
power grid by collecting data from multiple data sources, analyzing the data,
and displaying the results. *Elec. Power Grp. LLC*, 830 F.3d at 1351–52.
The Federal Circuit held that the claims were directed to an abstract idea,
explaining that "[t]he advance they purport to make is a process of gathering

and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions." *Id.* at 1354.

Accordingly, we find that independent claim 1 involves nothing more than receiving data, searching data, and analyzing data — activities squarely within the realm of abstract ideas. *See, e.g., Elec. Power Grp., LLC,* 830 F.3d at 1353–54; *see also Accenture Global Servs., GmbH v. Guidewire Software, Inc.,* 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (holding claims reciting "generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer" not patent eligible).

Appellants' arguments regarding preemption are likewise unpersuasive of Examiner error (*see* Appeal Br. 6; *see also* Reply Br. 3–4). Although preemption "might tend to impede innovation more than it would tend to promote it, 'thereby thwarting the primary object of the patent laws'" (*Alice,* 134 S. Ct. at 2354 (citing Mayo, 132 S. Ct. at 1293)), "the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.,* 788 F.3d 1371, 1379 (Fed. Cir. 2015). *See also OIP Techs.,* 788 F.3d at 1362–63 ("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.").

Step two is "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.'" *Alice,* 134 S.Ct. at 2355 (citing *Mayo,* 132 S.Ct. at 1294).

And, similar to the situation in *Electric Power*, we find nothing sufficient to remove the claims from the class of subject matter ineligible for patenting. As the court explained in *Electric Power*, "merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas." *Elec. Power Grp.*, 830 F.3d at 1355. Here, as the Examiner points out, independent claim 1 "is basically directed to information searching and comparing and nothing else. The process being performed on a 'computing device', at best, limits the use of the abstract idea to a particular technological environment" (Ans. 4).

Appellants argue that the Examiner completely disregards limitations of claim 1 which recite "'processor execution of a name matching algorithm that accounts for name variations'" (Appeal Br. 7) and "execution of a 'mailing address search for other properties whose mailing address matches an address of the first property'" (*id.*). However, the Specification discloses that "[a] conventional and/or proprietary name matching algorithm may be used for this purpose" (Spec. ¶ 28), and the only other disclosure regarding the algorithm identifies using "a conventional name matching algorithm, such as the Jaro-Winkler algorithm" (*id.*). Similarly, the Specification discloses executing the "mailing address search" using "reverse phone data queries or data provided by rental data aggregators" (*id.* ¶ 32). Thus, we agree with the Examiner that the steps recited by independent claim 1 amount to nothing more than mere instructions to implement the abstract idea on a computer (*see* Ans. 4–5)—none of which add inventiveness because they merely require the application of conventional, well-known

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analytical steps. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) ("[T]he claimed sequence of steps comprises only 'conventional steps, specified at a high level of generality,' which is insufficient to supply an 'inventive concept.'") (citing *Alice*, 134 S. Ct. at 2357).

Appellants argue further that the Examiner fails to satisfy the second step of the *Alice* analysis, because independent claim 1 "us[es] additional data sources (including 'a data repository of aggregated loan data' and 'public recorder data that comprises property sales transaction data'), in a particular manner, to search for additional properties that may not show up in the credit header data" (Appeal Br. 8), and as such, independent claim 1 provides a technical solution to "the problem of accurately identifying owned properties" (*id.*). Appellants' argument is not persuasive.

Here, the claims do not, for example, purport to improve the functioning of the computer itself or involve a solution necessarily rooted in computer technology to overcome a problem specific to the realm of computer networks, but instead embodies the use of generic computer components in a conventional manner to perform an abstract idea, which, as the Court in *DDR Holdings* explained, is not patent eligible. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) ("[T]hese claims in substance were directed to nothing more than the performance of an abstract business practice on the Internet or using a conventional computer. Such claims are not patent-eligible."). Nor do the claims effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of "searching, assessing and comparing known

information to identify properties owned by an individual to mitigate risk for a loan" (Final Act. 4; *see also* Ans. 3), which under our precedents, is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Equally unpersuasive is Appellants' argument that "the present claims are analogous to those found in" *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) because "the present claims recite an inventive concept that extends beyond the identified abstract idea" (Reply Br. 3).

In *BASCOM*, the Federal Circuit found that the claims were directed to an abstract idea of filtering Internet content under step one of the *Alice* test. BASCOM, 827 F.3d at 1348. Under step two, the Federal Circuit found that the limitations of the claims, taken individually, recited generic computer, network, and Internet components, which were not inventive by themselves. *Id*. at 1349. However, the court found that "[b]y taking a prior art filter solution (one-size-fits-all filter at the [Internet Service Provider ("ISP")] server) and making it more dynamic and efficient (providing individualized filtering at the ISP server), the claimed invention represents a 'software-based invention[ ] that improve[s] the performance of the computer system itself.'" *Id*. at 1351 (citations omitted). As such, the court determined that "[o]n this limited record, this specific method of filtering internet content cannot be said, as a matter of law, to have been conventional or generic." *Id*. at 1350.

Here, there is no evident parallel between Appellants' claims and the claims in *BASCOM*, nor have Appellants set forth any such parallel. The record does not indicate, for example, that the claimed invention relates to a

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software-based invention that improves the performance of the computer system itself. Instead, the claims are directed to performing the abstract idea of "searching, assessing and comparing known information to identify properties owned by an individual to mitigate risk for a loan" (Final Act. 4; *see also* Ans. 3) on one or more general-purpose computers (*see* Spec. ¶ 50). And it is well-settled that "merely recit[ing] the abstract idea . . . with the requirement to perform it on the internet, or to perform it on a set of generic computer components . . . would not contain an inventive concept." *BASCOM*, 827 F.3d at 1350.

Appellants also argues that "the operations described in claim 1 are not analogous to any business practice that is, or reasonably can be, performed without the use of a computer" (Appeal Br. 8). However, Appellants' argument is not persuasive at least because Appellants fail to provide adequate evidence or technical reasoning as to how or why any efficiencies provided by the claimed invention are necessarily rooted in computer technology. The fact that the claim 1 may use a matching algorithm "that increases the likelihood of locating owned properties" (Appeal Br. 7; *see also* Reply Br. 3–4) does not make the claimed invention any less abstract. "[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible." *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

We also are not persuaded by Appellants' argument that independent "claim 1 recites an inventive concept" that "transform[s] the abstract idea into a patent eligible invention" because the Examiner "has implicitly found that claim 1 recites an inventive concept by finding the claimed subject matter to be novel and non-obvious over the cited art" (Appeal Br. 8–9). To

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the extent that Appellants argue that independent claim 1 necessarily contains an "inventive concept" because the claims are not rejected over prior art, Appellants misapprehend the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an "inventive concept," the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for "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.'" *Alice*, 134 S. Ct. at 2355. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

In view of the foregoing, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 1, and claims 2, 3, 5, 6, and 8, which fall with independent claim 1.

Independent claim 9 and dependent claims 10, 11, and 13

Appellants argue claims 9–11 and 13 as a group (*see* Appeal Br. 9–10). We select claim 9 as representative. Claims 10, 11, and 13 stand or fall with independent claim 9. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants argue "[w]hen viewed as a whole, claim 9, like claim 1, is not directed to an abstract idea" (Appeal Br. 10). Instead, Appellants argue that independent claim 9 "is directed to an analytics system that includes, and uses, a specific combination of data repositories to search for properties owned by an individual" (*id.*). However, independent claim 9 is substantially similar to independent claim 1 and recites a system that corresponds to the method of independent claim 1. Appellants make the same arguments as independent claim 1 for independent claim 9 (*see* Appeal

Br. 9–10), and we do not find these arguments persuasive of error in the Examiner's rejection of independent claim 9 for the reasons discussed above in regard to independent claim 1. Here, as in *Alice*, "the system claims are no different in substance from the method claims. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea." *Alice*, 134 S. Ct. at 2351.

In view of the foregoing, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 9, and claims 10, 11, and 13, which fall with independent claim 9.

DECISION

The Examiner's rejection of claims 1–3, 5, 6, 8–11, and 13 under 35 U.S.C. § 101 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