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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/387,694	05/06/2009	Andres Fabris	TRAX01-00002	5124
23990	7590	10/27/2017	EXAMINER	
DOCKET CLERK P.O. DRAWER 800889 DALLAS, TX 75380			HARRINGTON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3628	
			NOTIFICATION DATE	DELIVERY MODE
			10/27/2017	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDRES FABRIS and ANDREW CHEN

Appeal 2016-007533
Application 12/387,694¹
Technology Center 3600

Before KRISTEN L. DROESCH, JOHN A. EVANS, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

This is a decision on Rehearing in Appeal No. 2016-007533. We have jurisdiction under 35 U.S.C. § 6(b). Requests for Rehearing are limited to matters misapprehended or overlooked by the Board in rendering the original decision. 37 C.F.R. § 41.52.

We have reconsidered our Decision regarding the claims in light of Appellants' arguments in the Request for Rehearing ("Request"). We grant the Request to the extent that we consider the Appellants' arguments *infra*,

¹ The real party in interest is identified as Traxo, LLC. App. Br. 2.

but DENY the request to modify our Decision. We incorporate our earlier Decision herein by reference. *See* 37 C.F.R. § 41.52(a)(1).

ISSUES ON REHEARING

Appellants present arguments they assert should be considered in the Request. Thus, the issue is whether the Board either overlooked or misapprehended these arguments.

ANALYSIS

In our Decision, we affirmed the rejections of claims 1–12 and 14–28 under 35 U.S.C. § 101. (Decision 11).

Appellants’ argue the Decision errs, under the two step test of *Alice*, because the claims are not directed to an abstract idea (Step 1) and the claims recite significantly more than the alleged abstract idea (Step 2). (Req. 2–9). *Alice Corp. v. CLS Bank International*, 134 S.Ct. 2347 (2014); *Mayo Collaborative Services v. Prometheus Labs. Inc.*, 132 S.Ct. 1289 (2012).

Step one of Alice

Appellants argue “[t]he Decision errs by concluding that “none of the claims provides a solution ‘necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks’” (Decision 9) and in finding that “any purported faster or more efficient performance of the claimed steps or acts merely comes from the capabilities of a general-purpose computer and/or computer related elements, rather than from Appellants[] claimed steps or functions.” (Decision 10; *see also* Req. 2). According to Appellants, claim 1 requires a

data processing system initiating access to a first online data source over a network, the data processing system pulling first travel information from the first online data source, the data processing system automatically detecting second travel information from a data record that is pushed to the data processing system by a second online data source. Req. 3–4. Appellants then argue, unlike *Electric Power Group*, the steps cannot be performed as mental steps, e.g., “[i]t is impossible for a person to mentally initiate access to a first online data source over a network.” *Id.* at 4. Appellants argue claim 1 must be performed using computer and network technology and the communication of the travel plans come from multiple sources associated with computer networks and thus the problem that Appellants’ disclosure addresses “specifically aris[es] in the realm of computer networks.” *Id.* In particular, “as in DDR, [c]laim 1 (as well as other independent claims and dependent claims 6, 8, 9) is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.*

Appellants argue the Federal Circuit stated that a claim that uses limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice is not directed to an abstract idea. *Id.* at 5 (citing *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299, 1303 (Fed. Cir. 2016)). According to Appellants, in *McRO*, after performing a detailed preemption analysis in step one of the *Alice* test, the Court held that “the ordered combination of claimed steps, using unconventional rules that relate sub-sequences of phonemes, timings, and morph weight sets, is not directed to an abstract idea and is therefore patent-eligible subject matter under 101” and “[t]he claims were found to be

patent-eligible even where the claimed improvement was incorporated in software.” Req. 5–6.

Appellants argue, pursuant to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016), it is clear that claim 1 as a whole is not simply directed to excluded subject matter, and pursuant to *McRO*, claim 1 is limited to a specific process using particular information and techniques to achieve an improved technological result, and claim 1 does not preempt approaches that use different information or different techniques. *Id.* at 6.

In our Decision, we stated we are not persuaded by Appellants’ arguments set forth in the Briefs and agree instead with the Examiner’s findings that the claims are directed to abstract ideas and patent-ineligible concepts. Decision 3–10. In particular, the claims are directed to “using categories to organize, store, and transmit information, and using mathematical correlations to organize information.” Req. 6; *see also* Decision 3–10.

We agree with the Examiner’s findings as discussed in our Decision (6–10):

Claim 1 has thus been directed towards a series of steps of accessing a database, transmitting travel information from the database, detecting new information in a second database, determining trip information, displaying a notifications to a first user based on a comparison of trip information, transmitting a notification to a second user, and displaying notifications to a first user when changes are made with the second user; thus using categories to organize, store, and transmit information, and using mathematical correlations to organize information; thus an abstract idea. More simply, the organization of first and second travel information in databases, and using mathematical correlations of the travel information to identify overlapping data, and transmitting information to users, is an abstract idea.

The Appellant has failed to direct the claim limitations, taken individually or in combination, to something that amounts to significantly more than the abstract idea because merely receiving information, transmitting information, and displaying information are deemed extrasolution activity.

Additionally, the implementation of the generic computer elements (data processing system and a network) recited in high generality, fail to amount to significantly more than the recited abstract idea, as their implementation would be well-known, routine, and conventional in any computer implementation of the abstract idea. Particularly, the mere use of applying a computer and a network to organize first and second travel information in databases, use mathematical correlations of the travel information to identify overlapping data, and transmitting information, such as notifications and buddy requests to users fails to amount to significantly more than the abstract idea.

Ans. 4–5.

The Applicant's claimed invention, as shown above, is not directed a problem specifically arising in the realm of computer networks, but instead to mere using categories to organize, store, and transmit information, and using mathematical correlations to organize information, with the mere addition of taking place using a computer and a network to transmit information. The Applicant has failed to direct the claimed invention towards the actual computer network, or a problem arising in it, and instead has merely relied on said network to transmit travel information and notifications, which are well-known, routine, and conventional activities in the realm of computers.

Ans. 7.

It is first noted that the Appellant has failed to actually identify any limitations that amount to significantly more than the abstract idea, and instead has made a general allegation that the stated claim includes “numerous elements related to specific

data and specific operations. This is 'substantially more' than any alleged abstract concept." Second, the Examiner notes that this conclusion by the Appellant is incorrect and falsely equates all extrasolution activity and field of use activity to significantly more than the abstract idea. The Examiner notes that merely grounding the claimed invention the realm of reservations and travel, the Applicant has merely narrowed the abstract idea with a field of use.

Additionally, the courts have recognized the following computer functions to be well understood, routine, and conventional functions when they are claimed in a merely generic manner: receiving, processing, and storing data, electronic recordkeeping, and receiving or transmitting data over a network, e.g., using the Internet to gather data. In particular, the Examiner notes that the mere fathering of first and second travel information is simple using the Internet to gather data, and thus not significantly more than the abstract idea. Additionally, displaying notifications to alert a user to correlated data, displaying a notification to a buddy, and displaying a notification to a user regarding the buddy, is merely the transmission and outputting of data over a network and thus fails to amount to significantly more than the abstract idea.

Ans. 8–9.

Additionally, when considering if the claimed limitations, when viewed in individually or in combination, amount to significantly more, the Examiner notes that the Appellant has merely further recited within the claim, beyond the abstract idea, the steps of data gathering and data output, and the field of use of the abstract idea, and thus the Appellant has failed to claim anything more than extrasolution activity.

Ans. 10.

As we stated in our Decision:

We conclude each of Appellants' claims on appeal is distinguishable from the type of claim considered by the court in *Enfish* as none of Appellants' claims is "directed to an improvement in the functioning of a computer," as was found by the court regarding the subject claim in *Enfish*, 822 F.3d at 1338. Similarly, we conclude none of the claims provides a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR*, 773 F.3d at 1257. Regarding *Enfish* and *DDR*, we note the Specification provides no basis to support Appellants' arguments. *See*, for example, Spec. ¶¶ 3–7, 88–97.

Decision 9.

Regarding *McRo*, while claim 1 may not preempt other approaches that use different information or different techniques, we are not persuaded by Appellants' argument "the ordered combination of claimed steps, using *unconventional rules* that relate sub-sequences . . . is [] patent-eligible subject matter" is applicable here. Req. 5–6. First, pre-emption is only a factor to be considered and, second, Appellants do not present sufficient persuasive evidence that *unconventional rules* are present in the claims. Regarding preemption, "[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility. . . . Where a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63.

Step two of Alice

Appellants argue the claims are directed to significantly more than any alleged abstract idea, “the Decision has not identified or addressed any additional elements in Claim 1 beyond the alleged abstract idea,” and it is not clear that the Decision has given any consideration to the additional elements recited in the claims, both beyond and within the alleged abstract idea. Req. 7–9. According to Appellants, “virtually everything recited in Claim 1 extends beyond the mere concept of “using categories to organize, store, and transmit information, and using mathematical correlations to organize information.” *Id.* at 7. Appellants argue the additional elements in the claim “considered as an ordered combination amount to significantly more than the alleged abstract idea.” *Id.* at 8.

In our Decision, we stated we are not persuaded by Appellants’ arguments and agree with the findings of the Examiner that the claims do not constitute an inventive concept that is significantly more than a patent on the patent-ineligible concept. Decision 10–11; *see also* Decision 6–10 (citing Ans. 4–12 including Examiner’s findings). The claims include no limitations that prevent covering the abstract idea itself. As discussed regarding Step one, *infra*, the recited additional elements (generic computer functions including database, network, Internet and related elements) are conventional and the hardware features are the type of generic element that has been determined to be insufficient by the Supreme Court to transform a patent-ineligible claim into one that is patent-eligible. *See Alice*, 134 S.Ct. at 2358; *see also* Decision 6–10. Additionally, we note neither Appellants nor the Specification provides sufficient basis to support the claimed “additional elements” to be other than conventional or an ordered

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combination that amounts to significantly more than the identified abstract idea. Req. 7–9.

In view of the above, we find no error in the 35 U.S.C. § 101 rejection of claims 1–12 and 14–28 and in our affirmance of that rejection.

CONCLUSION

Nothing in Appellants' Request has persuaded us that we have overlooked or misapprehended the arguments made by Appellants. Accordingly, we deny the Request for Rehearing.

DECISION

To summarize, our decision is as follows:

We have considered the Request but DENY the request that we reverse the Examiner as to claims 1–12 and 14–28.

DENIED