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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LUKE A. HAMMOCK and JANUSZ MICHAEL NICZYPORUK

Appeal 2016-007736¹
Application 14/042,379²
Technology Center 3600

Before HUBERT C. LORIN, BIBHU R. MOHANTY, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

MEDLOCK, *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 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

An oral hearing in the appeal was held on March 29, 2018.

We AFFIRM.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed November 23, 2015) and Reply Brief (“Reply Br.,” filed August 17, 2016), and the Examiner’s Answer (“Ans.,” mailed June 17, 2016) and Final Office Action (“Final Act.,” mailed May 19, 2015). The record includes a transcript of the March 29, 2018 oral hearing.

² Appellants identify Capital One Financial Corporation as the real party in interest. App. Br. 3.

CLAIMED INVENTION

Appellants' claimed invention "generally relate[s] to financing sales of goods or services, in particular increasing the rate of conversion from customers approved for loans to customers who actually consummate the loans" (Spec. ¶ 2).

Claims 1, 12, and 20 are the independent claims on appeal. Claims 1 and 20, reproduced below, are illustrative of the claimed subject matter:

1. A system for providing purchase financing, the system comprising:
 - a memory storing instructions; and
 - a processor configured to execute the instructions to:
 - receive an indication that a buyer has requested a loan account for purposes of purchasing an item for sale, the indication including buyer information;
 - determine creditworthiness of the buyer based on the buyer information;
 - configure a loan account according to a first set of terms for the buyer based on the creditworthiness determination;
 - initiate transmission of funds associated with the loan account to the buyer according to the first set of terms;
 - receive purchase transaction information associated with the item for sale purchased by the buyer with the transmitted funds subsequent to the transmission of funds;
 - determine an eligibility score for a secured loan account associated with the buyer based on the buyer information and received purchase transaction information; and
 - associate a second set of terms for the loan account based on the determined eligibility score.

20. A system for providing purchase financing, the system comprising:
- a memory storing instructions; and
 - a processor configured to execute the instructions to:
 - receive an indication that a buyer wishes to commence a purchase transaction for purposes of purchasing an item for sale, the indication including buyer information;
 - transmit information associated with one or more of the buyer or the purchase transaction to a financial service system;
 - receive confirmation of buyer financing eligibility from the financial service system for an unsecured loan account to finance the purchase of the item for sale;
 - transmit purchase transaction information associated with the sale of a buyer item to the financial service system; and
 - receive funds associated with the unsecured loan account comprising the financed portion of the sales price from the buyer, wherein the funds were transmitted to a financial service account associated with the buyer by the financial service system.

REJECTIONS

Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 2, 3, 11, 12, and 13 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Petralia (US 2007/0150409 A1, pub. June 28, 2007).

Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over Petralia and Dinamani et al. (US 8,447,667 B1, iss. May 21, 2013) (hereinafter “Dinamani”).

Claims 5, 6, 14, and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Petralia and Gallina (US 2003/0172025 A1, pub. Sept. 11, 2003).

Claims 7–10 and 16–19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Petralia and Weiss (US 2002/0035520 A1, pub. Mar. 21, 2002).

Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Petralia and Weiss.

ANALYSIS

Non-Statutory Subject Matter

Under 35 U.S.C. § 101, 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 patentable. *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 framework 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.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

The 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, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

In rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that the claims are directed to a “method of and system for providing purchase financing, and converting unsecured debt into secured debt after a purchase”; that the claims are economic in nature and reflect a long standing commercial practice; and that, as such, the claims recite an abstract idea (Final Act. 3). The Examiner also determined that the claims as a whole, do not amount to significantly more than the abstract idea itself, observing that the claims do not effect an improvement to another technology or technical field; do not amount to an improvement to the functioning of a computer itself; and do not move beyond a general link of the use of an abstract idea to a particular, albeit well-understood, routine, and conventional technological environment (*id.*).

Appellants charge that the § 101 rejection should be reversed because, contrary to instructions set forth in the USPTO’s June 25, 2014 “Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice*

Corporation Pty. Ltd. v. CLS Bank International, et al.” and the “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), the Final Office Action “provides virtually no analysis beyond a bald restatement of the *Alice* test” (App. Br. 9). Appellants maintain that the Final Office Action “fails to provide Appellant[s] with sufficient notice of the basis for the rejection” and that this prejudices Appellants’ ability to provide a meaningful response (*id.*; *see also* Reply Br. 3–4 (asserting that the Examiner also has failed to establish a *prima facie* case of patent-ineligibility)).

We agree with Appellants that additional explanation is always helpful. But we cannot agree that the Examiner’s rejection was insufficient to put Appellants on notice of the basis for the rejection; nor do we agree that the Examiner has otherwise failed to set forth a *prima facie* case of patent-ineligibility.

The Federal Circuit has repeatedly observed that “the *prima facie* case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The court has, thus, held that the USPTO carries its procedural burden of establishing a *prima facie* case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for the rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original). Thus, all that is required of the Office is that it sets forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice

requirement of § 132. *Id.*; see also *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (“Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

There is no indication here that the § 101 rejection was not understood or the Examiner’s rejection otherwise fails to satisfy the notice requirement of § 132. Instead, Appellants’ understanding of the rejection is clearly manifested by their response, as set forth in their briefs.

We also are not persuaded of Examiner error to the extent that Appellants argue that the claims are patent-eligible because the claims would not “monopolize every substantial application of ‘providing purchase financing, and converting an unsecured debt into a secured debt’” or otherwise preempt this concept (App. Br. 10). There is no dispute that the Supreme Court has described “the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice Corp.*, 134 S. Ct. at 2354. But, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354). “[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Addressing step one of the *Mayo/Alice* framework, and responding to the Examiner’s Answer, Appellants assert, and we agree, that the appropriate

inquiry is not whether an abstract idea is *present* in the claims, i.e., whether the claims *include* a patent-ineligible abstract idea (Reply Br. 4). “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.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp.*, 790 F.3d at 1346).

Appellants criticize the Examiner’s reference to the presence of an abstract idea (Reply Br. 4 (citing Ans. 2 (“If an abstract idea is present in the claim, any element or combination of elements in the claim must be sufficient to ensure that the claim amounts to significantly more than the abstract idea itself”))) when the question is more appropriately phrased in terms of whether the claims at issue are “directed to” an abstract idea. *See Alice*, 134 S. Ct. at 2355. Yet, Appellants cannot reasonably deny that the claims are directed to providing purchase financing, and converting unsecured debt into secured debt after a purchase — the Specification clearly supports that view (*see, e.g.*, Spec, Title (“Unsecured to Secured Loan Conversion in Automobile Finance”), Abstract (“Systems and methods are disclosed for configuring a loan account program to provide buyers of items, particularly automobiles, the full principal of the loan Upon confirmation of the purchase . . . the buyer’s loan account may be converted to a secured loan account product with more favorable terms.”)). Nor can Appellants reasonably deny that this is a fundamental, long-standing, and well-known economic practice; as such, it is an abstract idea.

Appellants charge that the Examiner has chosen “an unreasonably broad construction of the claimed combination of elements” and that the

Examiner has failed to consider the character of the claims as a whole (Reply Br. 5–6). But, aside from the conclusory assertion that “[n]owhere does the Examiner’s Answer explain how each limitation of Appellant’s [sic] claims — considered ‘both individually and as an ordered combination,’ . . . is ‘directed to’ [an] abstract idea” (*id.* at 5), Appellants offer no explanation as to why any particular claim limitation requires alteration of the Examiner’s identification of the concept to which the claims are directed.

Appellants also argue that the § 101 rejection cannot be sustained because the Examiner has not identified a case in which the courts have identified a similar concept as an abstract idea (Reply Br. 6–8). Yet, to the extent Appellants maintain that the § 101 rejection must be withdrawn because the Examiner has failed to comply with USPTO guidelines, i.e., the USPTO’s May 4, 2016 Memorandum, “Formulating a Subject Matter Eligibility Rejection and Evaluating the Applicant’s Response to a Subject Matter Eligibility Rejection,” we note that an examiner’s failure to follow the Director’s guidance is appealable only to the extent that the examiner has failed to follow the statutes or case law. To the extent the Director’s guidance goes beyond the case law and is more restrictive on the Examiner than the case law, the failure of the Examiner to follow those added restrictions is a matter for petition to the Director. We are aware of no controlling precedent, nor do Appellants identify any controlling case law, that precludes an examiner from finding a claimed concept patent-ineligible unless it is similar to a concept that a court has previously identified as abstract.

Still focusing on step one of the *Mayo/Alice* framework Appellants argue that the claims are not directed to an abstract idea because, like the claims in *Enfish*, the pending claims “recite an improvement to computer resource utilization itself, improving the efficiency of the system in generating offers for unsecured loan products and the flexibility of the system in converting unsecured loan products to secured loan products” (Reply Br. 8–9). Yet, Appellants do not identify any evidence of record, short of attorney argument, to support that position. For example, Appellants do not identify or otherwise highlight any portions of the Specification. And we found nothing, from our review of the Specification, which ascribes any particular technical improvement in computerized systems to the claimed invention.

Moreover, even accepting Appellants’ argument, there is a fundamental difference between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular task, on the other. Indeed, the Federal Circuit applied this distinction in *Enfish* in rejecting a § 101 challenge at the step one stage in the *Alice* analysis because the claims at issue focused on a specific type of data structure, i.e., a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data, *Enfish*, 822 F.3d. at 1335–36, and not on asserted advances in uses to which existing computer capabilities could be put. The alleged improvements that Appellants tout do not concern an improvement to computer capabilities but instead relate to an alleged improvement in purchase financing, i.e., in generating offers for unsecured loan products and converting unsecured loan products to secured loan products, for which a

computer is used as a tool in its ordinary capacity. The Specification supports this conclusion, describing, in the “Background” section, the need to reform the financing process “to provide more speed and certainty to the process for all parties involved” (Spec. ¶ 6).

Turning to the second step of the *Mayo/Alice* framework, Appellants argue that even if the claims are directed to an abstract idea, the claims are nonetheless patent-eligible because the claims amount to “significantly more” than the alleged abstract idea (App. Br. 11–12; *see also* Reply Br. 10–14). Yet, to the extent Appellants maintain that the claims include features that amount to “significantly more” because these features are allegedly novel and/or non-obvious (App. Br. 11–12 (“Appellant’s [sic] claims involve at least one ‘inventive concept,’ insofar as each of the claims recites features not taught or suggested in the prior art of record”)), Appellants misapprehend the controlling precedent.

A finding of novelty or non-obviousness does not automatically lead to the conclusion that the claimed subject matter is patent-eligible. Although the second step in the *Mayo/Alice* 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 Corp.*, 134 S. Ct. at 2355 (citation omitted). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90;

see also Diamond v. Diehr, 450 U.S. 175, 188–89 (1981) (“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 a claim falls within the § 101 categories of possibly patentable subject matter.”).

We also are not persuaded, for the reasons set forth above, by Appellants’ argument the claimed features amount to “significantly more” than an abstract idea because they recite an improvement to computer functionality (Reply Br. 13–14). And, although Appellants charge that the Examiner has provided no explanation why courts or those in the field would recognize the claimed features to be well-understood, routine, conventional activities (*id.* at 12–13), we note that Appellants have presented no rebuttal evidence to demonstrate that these features are not well-understood, routine, and/or conventional.

Independent claims 1, 12, and 20 recite a processor or one or more processors. However, it is clear from the Specification that these are generic computer components (*see, e.g.*, Spec. ¶ 28 (“The processors may be one or more known processing devices, such as a microprocessor from the Pentium™ family manufactured by Intel™ or the Turion™ family manufactured by AMD™.”)). And the law is clear that claims directed to an abstract idea that “merely require generic computer implementation[] fail to transform that abstract idea into a patent-eligible invention.” *Alice Corp.*, 134 S. Ct. at 2357.

We are not persuaded, for the reasons outlined above, that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

Anticipation/Obviousness

Independent Claims 1 and 12 and Dependent Claims 2, 3, 11, and 13

We are persuaded by Appellants' argument that the Examiner erred in rejecting claims 1 and 12 under 35 U.S.C. § 102(b) or, in the alternative, under § 103(a) because Petralia does not disclose or suggest "receiv[ing] an indication that a buyer has requested a loan account for purposes of purchasing an item for sale" and "receiv[ing] purchase transaction information associated with the item for sale purchased by the buyer with the transmitted funds [associated with the loan account] subsequent to the transmission of funds [to the buyer]," as recited in claim 1, and similarly recited in claim 12 (App. Br. 12–15).

Petralia is directed to a system and method for expediting the process of extending home equity loans to owners of real property (Petralia, Abstract), and discloses that an applicant first submits an application for a home equity line of credit (*id.*). After determining that the applicant is creditworthy, in order to expedite the applicant's access to funds, the lender extends an unsecured line of credit to the applicant while the home equity application is pending; then, once the additional documentation and loan processing steps are completed, the lender files a lien on the applicant's equity interest and converts the unsecured line of credit to a secured line of credit (*id.*; *see also id.* ¶¶ 19–23, 28–29).

There is no dispute that Petralia discloses a loan conversion, i.e., an unsecured line of credit to a secured line of credit. There also is no dispute that the line of credit, i.e., the loan proceeds, can be used to pay for other items and/or services, i.e., to make purchases. However, we agree with Appellants that Petralia does not disclose that the loan proceeds are used to

purchase the item that subsequently carries the lien securing the loan, as called for in claims 1 and 12; instead, “Petralia’s loans are based on the existing equity in an asset that the loan customer has already purchased” (App. Br. 14 (emphasis omitted)).

Responding to Appellants’ arguments in the Answer, the Examiner asserts that adding functional intent-to-use language fails to distinguish the invention from Petralia because “the loans therein may be used for such purposes” (Ans. 12). But we agree with Appellants that the limitations are more than merely functional intent-to-use language (Reply Br. 18–19). We also note that the relevant issue here is not whether the loan proceeds can be used to make a purchase but instead whether Petralia discloses or suggests that the requested loan is for the purpose of purchasing an item for sale where the item purchased with funds is the same item that will ultimately secure the loan — Petralia does not.

The Examiner alternatively rejects claims 1 and 12 under § 103 as obvious over Petralia. But the Examiner has not established on this record that a person of ordinary skill in the art at the time of Appellants’ invention would have had an apparent reason to modify Petralia’s home equity credit conversion system and method to arrive at the claimed invention, as recited in claims 1 and 12. As such, the Examiner has failed to establish a prima facie case of obviousness. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (holding that a prima facie case of obviousness requires showing that one of ordinary skill in the art would have had both an apparent reason to modify the prior art and predictability or a reasonable expectation of success in doing so).

In view of the foregoing, we do not sustain the Examiner's rejections of independent claims 1 and 12 under 35 U.S.C. §§ 102(b) and 103(a). For the same reasons, we also do not sustain the Examiner's rejections of dependent claims 2, 3, 11, and 13.

Dependent Claims 4–10 and 14–19

Claims 4–10 and 14–19 depend, directly or indirectly, from independent claims 1 and 12, respectively. The rejections of these dependent claims do not cure the deficiency in the Examiner's rejections of independent claims 1 and 12. Therefore, we do not sustain the rejections of claims 4–10 and 14–19 for substantially the same reasons set forth above with respect to independent claims 1 and 12.

Independent Claim 20

In rejecting claim 20 under § 103(a), the Examiner cites Weiss as disclosing substantially all the claim limitations.³ But, the Examiner acknowledges that Weiss does not specifically disclose “the initial confirmation and receipt of funds associated with the unsecured loan account comprising the financed portion of the sales price from the buyer, wherein the funds were transmitted to a financial service account associated with the buyer by the financial service system,” i.e., “receiv[ing] confirmation of buyer financing eligibility from the financial service system

³ Weiss is directed to a property valuation system, and discloses that the system includes functionality for automatically adjusting (either upwardly or downwardly) the lines on an equity line of credit with respect to the equity in the subject property (*see, e.g.*, Weiss ¶ 28, Abstract). Weiss also discloses an unsecured debt conversion system and method that facilitates the conversion of unsecured debt, e.g., credit card debt, to debts secured by a subject property (*see, e.g., id.* ¶¶ 31–32, 104, and 110).

for an unsecured loan account to finance the purchase of the item for sale”; and “receiv[ing] funds associated with the unsecured loan account comprising the financed portion of the sales price from the buyer, wherein the funds were transmitted to a financial service account associated with the buyer by the financial service system,” as recited in claim 20 (Final Act. 10–11).

The Examiner cites Petralia to cure the deficiency of Weiss. And the Examiner concludes that “[i]t would have been obvious to an ordinary artisan to modify Weiss, to include the initial step of obtaining the unsecured debt in order to provide the user with more immediate funding” (*id.* at 11).

The difficulty with the Examiner’s rejection, as Appellants point out, is that neither Weiss nor Petralia is concerned with extending an unsecured loan account to a buyer for purposes of financing the purchase of an item; instead both Weiss and Petralia disclose debt conversation systems in which loan are provided based on pre-existing equity in another asset (App. Br. 17–18).

It also is not enough to show merely that the individual elements of claim 20 may be found in the cited references; instead, the Examiner must present a cogent rationale to explain why a person of ordinary skill would have had an apparent reason to select and combine these individual elements to arrive at the claimed invention. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds [require] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”) (cited with approval in *KSR*, 550 U.S. at 418).

We find that the Examiner has not provided the requisite articulated reasoning with rational underpinning to support the legal conclusion of

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obviousness. Therefore, we do not sustain the Examiner's rejection of claim 20 under 35 U.S.C. § 103(a).

DECISION

The Examiner's rejection of claims 1–20 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1, 2, 3, 11, 12, and 13 under 35 U.S.C. § 102(b) is reversed.

The Examiner's rejections of claims 1–20 under 35 U.S.C. § 103(a) are reversed.

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