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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ETHAN HADAR and ALEI GOPAL

Appeal 2016-007918
Application 12/708,879¹
Technology Center 3600

Before HUNG H. BUI, JOYCE CRAIG, and AARON W. MOORE,
Administrative Patent Judges.

BUI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner’s final rejection of claims 1–22, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellants, the real party in interest is Computer Associates Think, Inc. App. Br. 2.

² Our Decision refers to Appellants’ Appeal Brief filed December 21, 2015 (“App. Br.”); Reply Brief filed August 11, 2016 (“Reply Br.”); Examiner’s Answer mailed June 13, 2016 (“Ans.”); Final Office Action mailed July 17, 2015 (“Final Act.”); and original Specification filed February 19, 2010 (“Spec.”).

STATEMENT OF THE CASE

Appellants' invention relates to "[a] system and method for IT services e-commerce arena for cloud computing environments." Abstract.

Claims 1, 8, and 15 are independent claims. Claim 1 illustrates Appellants' invention, as reproduced below:

1. A method comprising:

receiving, from each of a plurality of service clients, a respective request for processing time on a processor;

aggregating, at a brokerage server, the respective requests of two or more service clients from among the plurality of service clients such that the processing time requested by the two or more service clients is greater than a predetermined minimum amount of processing time required from at least one of a plurality of service providers, wherein each of the plurality of service providers provides processing time on a processor for processing times greater than or equal to the predetermined minimum amount and neither of the respective requests of the two or more service clients is greater than the predetermined minimum amount of processing time alone;

sending the aggregated respective requests of the two or more service clients to the plurality of service providers;

selecting a service provider from among the plurality of service providers to provide processing time to the two or more service clients; and

initiating a transaction between each of the two or more service clients and the selected service provider.

App. Br. 34 (Claims App.).

Examiner's Rejection³ and References

Claims 1–22 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Act. 10–12.

ANALYSIS

In *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014), the Supreme Court reiterates an analytical two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (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*, 134 S. Ct. at 2355. The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “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.* (citing *Mayo*, 132 S. Ct. at 1297). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the

³ Claims 1–22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ferris (US 2010/0131624 A1, published May 27, 2010) and Sanders (US 2005/0049937 A1; published Mar. 3, 2005). App. Br. 12–19. However, the rejection of these claims has been withdrawn by the Examiner and is no longer pending on appeal. Ans. 6.

patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

In rejecting independent claims 1, 8, and 15 and dependent claims 2–7, 9–14, and 16–22 under 35 U.S.C. § 101, the Examiner finds these claims are directed to an abstract idea of “[c]omparing values to a threshold and combining them until they meet a threshold of minimum requirements before performing a [brokerage] service,” i.e., a “fundamental economic practice.” Final Act. 11–12. The Examiner also finds

the claims as a whole do not amount to significantly more than the abstract idea itself. This is because the claims do not amount to an improvement to another technology or technical field, do not amount to an improvement to the functioning of a computer itself, do not move beyond a general link of the use of an abstract idea to a particular technological environment, and merely amount to the application or instructions to apply the abstract idea on a computer. The system claims amount to nothing more than a recitation of generic computer structure (to the extent they recite such structure at all) that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.

Id. at 11–12.

As to the first step of the *Alice* inquiry, Appellants contend independent claims 1, 8, and 15 are not directed to “a fundamental economic practice,” i.e., an abstract idea. App. Br. 15–16. Instead, Appellants argue these claims are directed to “a particular method for using an application stored on a mobile computing device to selecting a service provider from among a plurality of service providers to provide processing time to two or more requesting service clients.” *Id.* at 16. In the Reply, Appellants further argue the “claims do in fact improve computer functionality” “by improving

how processors are selected for the fulfillment of processing requests that would otherwise go unfilled.” Reply Br. 3–4.

We are not persuaded by Appellants’ arguments. As correctly recognized by the Examiner, (1) Appellants’ claims 1, 8, and 15, when considered in light of Appellants’ Specification, recite commercial trading in the context of a brokerage system and “initiating a transaction between each of the two or more service clients and the selected service provider” in a cloud computing environment based on “processing capacity needs” and (2) “initiating a transaction between each of the two or more service clients and the selected service provider” in a cloud computing environment is nothing more than a “fundamental economic practice” identified as an “abstract idea” by the Supreme Court in *Bilski v. Kappos*, 130 S. Ct. 3218 (2010).
Final Act. 11.

Contrary to Appellants’ arguments, none of the steps recited in claims 1, 8, and 15 seeks to improve computer functionality. “[S]electing a service provider from among the plurality of service providers to provide processing time to the two or more service clients” is not the same as improving the computer functionality as Appellants argue. Reply Br. 3–4. In fact, none of the steps recited in claims 1, 8, and 15 provides: (1) a “solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” as explained by the Federal Circuit in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014); “a specific improvement to the way computers operate,” as explained in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016); or (3) an “unconventional technology solution . . . to a technological problem” that “improve[s] the performance of

the system itself,” as explained in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1302 (Fed. Cir. 2016).

As to the second step of the *Alice* inquiry, Appellants argue “the recited features of Claim 1 amount to ‘significantly more’ than a mere abstract idea.” App. Br. 19. According to Appellants,

Claim 1 recites a specific way to match service clients with service providers by aggregating requests of two or more service clients that do not meet a predetermined minimum by themselves so as to select a service provider from [sic] among a plurality of service providers that would not service the clients otherwise and, as such, “amount to significantly more than interactive retirement planning.” *Id.* at 20.

We remain unpersuaded by Appellants’ arguments. In particular, we find nothing in Appellants’ claims 1, 8, and 15 that adds anything “significantly more” to transform the abstract concept of delivering “an electronic loyalty reward certificate” to a user into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. As described by the Supreme Court, the second step of the *Alice* inquiry is to “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.’” *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

Appellants do not argue any of the elements of claims 1, 8, and 15 is individually inventive. Nor do Appellants argue the ordered combination of these elements is inventive. App. Br. 19–21. Limiting such an abstract concept to generic components such as “a processor” and “a brokerage server” for operation in the manner recited in Appellants’ claims 1, 8, and 15 does not make the abstract concept patent-eligible under 35 U.S.C. § 101.

As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent ineligible abstract idea into a patent-eligible invention.” *See Alice*, 134 S. Ct. at 2359 (concluding claims “simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer” not patent eligible); *see also Ultramercial*, 772 F.3d 709, 715–16 (Fed. Cir. 2014) (Claims merely reciting abstract idea of using advertising as currency as applied to particular technological environment of the Internet not patent eligible.); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (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.); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (“Simply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible.”).

Because Appellants’ claims 1–22 are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of these claims under 35 U.S.C. § 101.

CONCLUSION

On the record before us, we conclude Appellants have not demonstrated the Examiner erred in rejecting claims 1–22 under 35 U.S.C. § 101.

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DECISION

As such, we affirm the Examiner's final rejection of claims 1–22.

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