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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALEXANDER HARLEY FRASER,
JOHN BLOBNER, LANCE RIGDON,
KRISTA GAYLE WRIGHT, VERONICA YUNG SU TAI,
RICHARD NEIL MACCONNELL,
and AMY ANDREWS MILLS

Appeal 2016-008318
Application 13/836,549
Technology Center 3600

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

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 29–34, 36–45, and 47, which are all of the claims pending in this application.[1] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellants, Manheim Investments, Inc. is the real party in interest. App. Br. 1.

INVENTION

Appellants' invention relates to systems and methods for live auctioneer led sales. Abstract. Claim 29 is illustrative of the subject matter on appeal and reads as follows:

> 29. A method, comprising:
>
> receiving, by one or more computers comprising one or more processors, information associated with a vehicle for sale by auction, wherein the information comprises a run order;
>
> receiving, by at least one of the one or more computers, a signal indicative of a live auctioneer conducting a sale of the vehicle by auction from an auctioneer computing device, wherein the signal indicative of the live auctioneer conducting the sale of the vehicle by auction comprises a real-time audio signal of the live auctioneer conducting the sale of the vehicle by auction;
>
> providing, by at least one of the one or more computers, the signal indicative of the live auctioneer conducting the sale of the vehicle by auction to one or more buyer computing devices, wherein the auctioneer computing device, at least one of the one or more buyer computing devices, and the vehicle are remotely located from one another;
>
> providing, by at least one of the one or more computers, an interface to facilitate communication between the one of the one or more buyer computing devices and a seller before, during, and after a sale;
>
> receiving, by at least one of the one or more computers and based at least in part on the signal indicative of the live auctioneer conducting the sale of the vehicle by auction, one or more if/then proxy bids for the vehicle from the one or more buyer computing devices; and
>
> providing, by at least one of the one or more computers, a dynamic guarantee acquisition fee to the one or more buyer computing devices, wherein the guarantee acquisition fee comprises an additional cost, to a buyer, to purchase a no-

questions-asked, money-back, vehicle-return guarantee from an operator of the auction.

REJECTIONS

Claims 29–34, 36–45, and 47 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Final Act. 2–3.

Claims 29–34, 36–45, and 47 stand rejected under 35 U.S.C. § 103(a) in view of various combinations of prior art.[2] *Id.* at 4–11.

ANALYSIS

We agree with and adopt as our own the Examiner's findings of facts and conclusions as set forth in the Answer and in the Final Action from which this appeal was taken. We have considered Appellants' arguments, but do not find them persuasive of error. We provide the following explanation for emphasis.

Appellants submit arguments only in support of reversing the rejection of claims 29–34, 36–45, and 47 under 35 U.S.C. § 101. Arguments not made are waived. Thus, we sustain the rejections of claims 29–34, 36–45, and 47 under 35 U.S.C. § 103(a) *pro forma*.

With regard to the § 101 rejection, the Examiner concluded claims 29–34, 36–45, and 47 are directed to unpatentable subject matter because

[2] The Examiner erroneously identifies non-pending claim 35 in the heading of the 35 U.S.C. § 103(a) rejection over Schoen et al., Bhogal, Kelly et al., and Sullivan et al., but does not reference claim 35 in the body of the rejection. Final Act. 4–6. We understand the Examiner to have meant to reject claims 29, 30, 32, 34, 36–38, 40–44, and 47 on this ground.

they are drawn to providing and receiving signals indicative of an auctioneer conducting a sale of a vehicle by way of bids, which is a method of organizing human activity and, thus, an abstract idea. Final Act. 2. The Examiner also found the claims do not include additional elements sufficient to amount to significantly more than the abstract idea. *Id.* at 2–3.

Appellants present several arguments directed to the Examiner's rejection of the claims under § 101. App. Br. 5–11. First, Appellants argue that the Examiner failed to provide any evidentiary support for the allegation that the claims are directed to an abstract idea. App. Br. 5.

Second, Appellants argue that, similar to the claims found patentable in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), the claims are not directed to an abstract idea, but instead are necessarily rooted in computer technology and solve a problem specifically arising in the realm of computer networks. *Id.* at 6.

Third, Appellants argue that the claims are directed to patent-eligible subject matter because the solution presented by the claims is tethered to the technology that created the problem that is solved. *Id.* at 7.

Fourth, Appellants argue that the claims are directed to patent-eligible subject matter because there is no analog equivalent to the problem addressed by the claims of the present application. *Id.* at 8 (citing *Trading Techs. Int'l, Inc. v. CQG, Inc.*, No. 05-CV-4811, 2015 WL 774655 (N.D. Ill. Feb. 24, 2015), *aff'd*, 675 F. App'x 1001 (Fed. Cir. 2017)).

Fifth, Appellants argue that, even if the claims are directed to the alleged abstract idea, they include an inventive concept that amounts to significantly more than the abstract idea. App. Br. 9. In particular, Appellants argue that the "inventive concept of facilitating a live auction

between remote parties in an online auction by providing a real-time audio signal of the live auctioneer, by providing the buyer with the option to purchase a return guarantee with the auction operator at the time of the auction, and by facilitating communication between the buyers and sellers before, during, and after a sale" amounts to significantly more than the alleged abstract idea. *Id.*

Sixth, Appellants argue that, even assuming *arguendo* that the claims are directed to an abstract idea, they do not preempt all practical applications of the idea, and thus, are patent-eligible. *Id.* at 10.

We do not find Appellants' arguments persuasive. The Supreme Court has long held that "[l]aws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). The "abstract ideas" category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). 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.* at 2355. 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.* (quoting *Mayo*, 132 S. Ct. at 1298, 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 patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (quoting *Mayo*, 132 S. Ct. at 1294). The prohibition against patenting an abstract idea "cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or adding 'insignificant postsolution activity.'" *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

Applying the first step of the *Alice* framework, we agree with the Examiner that claim 29[3] is directed to an abstract idea of organizing human activity. *See* Ans. 2. In particular, the steps recited in claim 29—including, for example, the method steps of "receiving . . . information associated with a vehicle for sale by auction," "receiving . . . a signal indicative of a live auctioneer conducting a sale," "providing . . . the signal indicative of the live auctioneer conducting the sale," "providing . . . an interface," "receiving . . . one or more if/then proxy bids," and "providing . . . a dynamic guarantee acquisition fee"—are directed to providing and receiving information and signals indicative of an auctioneer conducting a sale of a vehicle via bids. Claim 29 describes concepts relating to interpersonal activities, sales activities, and managing auction-related relationships or transactions between people. Specifically, claim 29 is directed to the relationship and transactions between a seller and a potential customer. Contrary to

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[3] Appellants argue all rejected claims as a group, and we choose claim 29 as representative of the group. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants' position (App. Br. 6), we conclude that sales activities related to an auction amount to a fundamental economic principle similar to the intermediated settlement in *Alice*, or the risk hedging in *Bilski*. Thus, we agree with the Examiner that Appellant's claim is directed to a fundamental economic principle and, in particular, the abstract idea of organizing human activity. *See* Final Act. 2–3.

We also agree with the Examiner that claim 29 merely amounts to the application or instructions to apply the abstract idea of organizing human activity on a computer. *Id.* 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, Inc. v. Hulu, LLC*, 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." (citation omitted)).

Appellants' argument that the Examiner failed to provide any evidentiary support for the allegation that the claims are directed to an abstract idea is not persuasive. App. Br. 5. We are aware of no controlling precedent that requires the Office to provide factual evidence to support a finding that a claim is directed to an abstract idea.

Moreover, in contrast to the claims in *DDR Holdings* and *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), which the Federal Circuit held were directed to specific improvements in computer capabilities and thus were patent-eligible subject matter, claim 29 neither is rooted in computer technology nor seeks to improve any type of computer capabilities. Appellants also have not persuaded us that "the solution presented by the claims is tethered to the technology that created the problem that is solved." *See* App. Br. 7. Nor have Appellants persuaded us that claim 29 addresses a "network-centric problem specific to computers, and which does not occur in traditional analog environments." *See id.* at 8. Appellants present no persuasive evidence or technical reasoning to support those positions. For example, Appellants identify no portion of the Specification, and we find none, that ascribes any particular technical improvement in computerized interfaces to the claimed invention. Instead, Appellants' claim 29 simply recites an abstract concept of organizing human behavior using generic computer processes.

Turning to the second step of the *Alice* analysis, we find nothing in claim 29 that adds anything "significantly more" to transform the abstract concept of organizing human behavior into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. None of Appellants' arguments persuade us that some inventive concept arises from the ordered combination of these steps,

which are ordinary steps in data processing and are recited in an ordinary order. *See* App. Br. 8–11. Claim 29 simply incorporates a general-purpose computer and generic components such as processors to perform generic computer functions, i.e., receiving and providing information and signals, which is not enough to transform an abstract idea into a patent-eligible invention. Claim 29 does not purport to improve the functioning of the computer system itself. Nor does it effect an improvement in any other technology or technical field. Instead, claim 29 amounts to nothing significantly more than using generic processors and components to carry out a transaction between a seller and a buyer.

We find no meaningful distinction between independent method claim 29 and independent system claim 42, independent media claim 43, or independent method claim 44. The claims are all directed to the same underlying invention, and Appellants do not argue then separately. Because we find that dependent claims 30–34, 36–41, 45, and 47 lack additional elements that would render the claims patent-eligible, we also sustain the 35 U.S.C. § 101 rejection of those dependent claims on the same basis as the independent claims from which they depend.

Accordingly, we sustain the Examiner's 35 U.S.C. § 101 rejection of representative claim 29, as well as the 35 U.S.C. § 101 rejection of grouped claims, 30–34, 36–45, and 47, not argued separately. *See* App. Br. 5; *see also* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

The decision of the Examiner to reject claims 29–34, 36–45, and 47 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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED