UNITED STATES PATENT AND TRADEMARK OFFICE

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11/389,785	03/27/2006	Cyril Brignone	82220024	8633

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EXAMINER
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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 CYRIL BRIGNONE,
ALAN MCREYNOLDS,
and JEAN TOURRIHES

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Appeal 2016–008540
Application 11/389,785[1]
Technology Center 3600

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Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

_____

[1] According to Appellants, the real party in interest is Hewlett Packard
Enterprise Development LP. Br. 3.

STATEMENT OF THE CASE[2]

Cyril Brignone, Alan McReynolds, and Jean Tourrihes (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claims 1–3 and 5–23, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellants invented an asset management system that uses policies based on the location of the assets. Specification para. 14.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

> 1. A method of managing assets using at least one policy, the method comprising:
>
> [1] storing at least one policy associated with managing assets,
>
> > wherein each of the assets
> >
> > > is located in one of a plurality of slots in a rack
> > >
> > > and
> > >
> > > includes an RFID tag identifying the asset;
>
> [2] reading, by an RFID reader array, the RFID tag of each of the assets
>
> > to detect which slot in the rack the asset is located;
>
> [3] determining slot location in the rack for each of the assets
>
> > based on the reading of the RFID tag of each of the assets;

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[2] Our decision will make reference to the Appellants' Appeal Brief ("Br.," filed December 10, 2015) and the Examiner's Answer ("Ans.," mailed May 9, 2016), and Final Action ("Final Act.," mailed September 11, 2015).

[4] receiving sensor information indicating a condition of each of the assets;

[5] determining, by a processing device, whether the at least one policy applies to each of the assets

based at least on the slot location and the sensor information of the asset;

and

[6] for each of the assets, performing a control function

based on a determination that the at least one policy applies to the asset,

wherein performing a control function includes controlling another computer system that is operable to directly or indirectly affect each asset that the at least one policy applies.

Claims 1–3 and 5–23 stand rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

ANALYSIS

Claims 1, 12, and 13 are the independent claims on appeal, with the rest of the claims on appeal depending therefrom.

The Examiner rejects these claims according to the two step procedure in *Alice Corp., Pty. Ltd. v CLS Bank Intl*, 134 S.Ct. 2347 (2014). As to the first

step, the Examiner finds that the claims are directed to managing a collection of assets using at least one policy. Final Act. 3. We agree. The preamble to claim 1 recites that it is a method of managing assets using at least one policy. The steps in claim 1 result in determining the applicability of a policy and performing a control function based on that determination. The Specification at paragraph 14 recites that the invention relates to an asset management system that uses policies based on the location of the assets. Thus all of the evidence supports the Examiner's finding that claim 1 is directed to managing a collection of assets using at least one policy, which, like the risk hedging in *Bilski* is a notoriously old practice and therefore an abstract idea. *See Bilski v. Kappos*, 561 U.S. 593 (2010). The remaining independent method claim is similar.

The second step of the *Alice* test requires the consideration of "the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent–eligible application." *Alice*, 134 S. Ct. at 2355.

Independent claims 1, 12, and 13 recite an RFID reader array and assets having RFID's, the assets being in rack slots, and the slot location being determined by reading the RFID's using the reader array, and using that slot information to apply some policy to some particular asset. According to the Appellants, the claims solve technical problems.

> One technical problem is how to perform pinpoint and autonomous and nearly continuous asset detection. Another technical problem is how to detect assets when the assets are nonfunctional, powered down or detached from the network. A technical solution to these problems includes the RFID tags and readers that are external to the assets but which may be located

on or near slots in a rack where the assets are housed to detect assets in the slots.

Br. 15.

Examiner finds that:

> The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because all of the elements described in the claimed invention are part of the abstract idea itself.

Final Act. 3. We agree with the Examiner that the claims appear to recite a generic computer system with generic RFID tags that perform generic functionalities which are well–understood, routine and conventional. *Id.*

However, the Examiner does not sufficiently establish that the "ordered combination" of the recited elements also fails to "'transform the nature of the claim' into a patent–eligible application." *Alice*, 134 S. Ct. at 2355. "[A]n inventive concept can be found in the non–conventional and non–generic arrangement of known, conventional pieces," even if these pieces constitute generic computer–related components. *Bascom Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016). In the instant claims the arrangement is an RFID reader array that is structurally positioned relative to slots of individual assets having RFID's to determine which slots individual assets are in and using the then determined slot information to implement policies as appropriate.

As discussed above, the Appellants explain that the claimed architecture (i.e., the ordered combination and arrangement of the recited elements) provides a particular technical advantage. The Examiner does not persuasively challenge the Appellants' position on this matter.

Accordingly, the Examiner has not sufficiently established, on the record before us, that independent claims 1, 12, and 13 (and the claims depending therefrom) do not pass muster under step two of the *Alice* test.

CONCLUSIONS OF LAW

The rejection of claims 1–3 and 5–23 under 35 U.S.C. § 101 as directed to non–statutory subject matter is improper.

DECISION

The rejection of claims 1–3 and 5–23 is reversed.

REVERSED