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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DENIS O'LEARY, VINCENT D'AGOSTINO,
S. RICHARD RE, JESSICA BURNEY, and
ADAM HOFFMAN

Appeal 2016-008632
Application 09/886,916¹
Technology Center 3600

Before ST. JOHN COURTENAY III, LARRY J. HUME, and
JASON J. CHUNG, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–88 and 91–94, which are all claims pending in the application. Claims 89 and 90 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is JPMorgan Chase Bank, N.A. App. Br. 1.

STATEMENT OF THE CASE²

The Invention

Appellants' disclosed embodiments and claimed invention "generally relate[] to systems and methods for conducting electronic commerce, and more particularly to systems and method for processing real time payments between consumer accounts." Spec. ¶ 2.

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A system for effectuating electronic payments using a credit transfer via an Electronic Funds Transfer (EFT) network, the system comprising:

at least one account system operated by a first institution and tangibly embodied in a processing system, the at least one account system maintaining a plurality of electronic payment accounts for a plurality of customers of a first bank, at least one of the plurality of customers having a demand deposit account at the first bank;

a bank interface coupled to the at least one account system and coupled to the first bank, the bank interface tangibly embodied in the processing system, the bank interface transmitting and receiving financial information related to the demand deposit account of the at least one customer and related to the electronic payment account of the at least one customer, the at least one account system funding the electronic payment

² Our decision relies upon Appellants' Appeal Brief ("App. Br.," filed May 24, 2016); Reply Brief ("Reply Br.," filed Sept. 16, 2016); Examiner's Answer ("Ans.," mailed July 18, 2016); Final Office Action ("Final Act.," mailed Mar. 11, 2016); and the original Specification ("Spec.," filed June 21, 2001).

account of the at least one customer from the demand deposit account of the at least one customer; and

a customer interface coupled to the at least one account system, the customer interface providing an interface for the plurality of customers to the at least one account system, the customer interface:

establishing an interface with a first customer including a log-in to establish interface with the first customer, the interface with the first customer utilizing encryption to provide protection to the interface with the first customer;

accepting a command from the first customer to transfer funds from the first customer's electronic payment account to an electronic payment account of another customer, the command including account information identifying the first customer's electronic payment account; and

transferring the command to the at least one account system; and

the at least one account system effectuating the commanded transfer of funds through the EFT network, such effectuating of the commanded transfer of funds including transmission of an EFT credit message representing a credit in an amount of the electronic payment, the transmitting of the EFT credit message constituting a pushing of funds to the electronic payment account of the another customer, the electronic payment account of the another customer being a virtual private locker (VPL) which is a receive-only account, the account number of which is known to the first customer, a payor of the funds, the customer interface transferring the command to the at least one account system, which effectuates the commanded transfer of funds, includes the account system:

receiving the command; and

receiving the account information
identifying the first customer's electronic payment
account; and

sending, through the EFT network, a
verification message to the electronic payment
account of the another customer to verify the VPL'
s existence and identity;

receiving from the VPL a response message
that includes a description of an owner of the VPL;

interfacing with the first customer to input a
selection from the first customer regarding whether
the another customer is to be provided with
information such that the first customer's electronic
payment account is identifiable to the another
customer, and inputting selection from the first
customer that the another customer is not to be
provided with information such that the first
customer's electronic payment account is
identifiable to the another customer;

wherein in such pushing, a payee account number of the
another customer, the payee, is transmitted over a network
without the account information of the first customer, the
payor; and

wherein the pushing of funds, without the account
information of the first customer, is constituted by the payee not
being provided with information such that the payor account is
identifiable to the payee.

Rejection on Appeal

Claims 1–88 and 91–94 stand rejected under 35 U.S.C. § 101 as being
directed to patent-ineligible subject matter. Final Act. 2 *et seq*; and see
Ans. 2.

CLAIM GROUPING

Based on Appellants' arguments (App. Br. 10–15), we decide the appeal of the § 101 rejection of claims 1–88 and 91–94 on the basis of representative claim 1.³

ISSUE

Appellants argue (App. Br. 10–15; Reply Br. 2–6) the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. These contentions present us with the following issue:

Did the Examiner err in concluding claim 1 is directed to the abstract idea of effectuating electronic payment using a credit transfer, i.e., a fundamental economic practice, and does not amount to significantly more than the abstract idea itself implemented by recitation of generic computers, networks, and interfaces that are well-known in the art?

ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. We do not consider arguments Appellants could have made but chose not to make in the Briefs, and we deem any such arguments waived. 37 C.F.R. § 41.37(c)(1)(iv).

³ "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

We disagree with Appellants' arguments with respect to claim 1 and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner's Answer in response to Appellants' arguments. We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

Alice Framework

Section 101 provides that anyone who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" may obtain a patent. 35 U.S.C. § 101. The Supreme Court has repeatedly emphasized that patent protection should not extend to claims that monopolize "the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. *Id.*

The Supreme Court's two-part *Mayo/Alice* framework guides us in distinguishing between patent claims that impermissibly claim the "building blocks of human ingenuity" and those that "integrate the building blocks into something more." *Id.* (internal quotation marks, citation, and bracketing omitted). First, we "determine whether the claims at issue are directed to [a] patent-ineligible concept[]." *Id.* at 2355. If so, we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application."

at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). While the two steps of the *Alice* framework are related, the "Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). We note the Supreme Court "has not established a definitive rule to determine what constitutes an 'abstract idea'" for the purposes of step one. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct at 2357).

However, our reviewing court has held claims ineligible as directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "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. Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Alice*, 134 S. Ct. at 2355–57. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citation omitted). If the claims are not directed to a patent-ineligible concept, the inquiry ends.

See Visual Memory LLC v. NVIDIA Corp., 867 F.3d 1253, 1262 (Fed. Cir. 2017). If the concept is directed to a patent-ineligible concept, we proceed to the "inventive concept" step. For that second step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

Alice Step 1 — Abstract Idea

Our reviewing court has held claims ineligible as being directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "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. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Alice*, 134 S. Ct. at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

Appellant contends:

[The] alleged abstract idea — "effectuating electronic payment using a credit transfer" — is not an abstract idea within the meaning of *Alice*. Specifically, the *Alice* court found the "intermediated settlement" concept, like the hedging concept at issue in *Bilski v. Kappas*, 561 U. S. 593 (2010), was "a fundamental economic practice long prevalent in our system of commerce." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. ___, slip op. at 9 (2014). Indeed, the Supreme Court cited a 1896

reference that discussed the use of intermediated settlement. *Id.* (citing Emery, Speculation on the Stock and Produce Exchanges of the United States, in 7 Studies in History, Economics and Public Law 283, 346-356 (1896) and describing it as "discussing the use of a 'clearing-house' as an intermediary to reduce settlement risk"). The claims here, however, are admittedly ***novel and nonobvious*** — the claims are allowable over the prior art of record.

App. Br. 11–12.

Responsive to Appellants' assertion the claims are novel and nonobvious, we first note the Supreme Court guides, "[t]he '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." *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981). Our reviewing court further indicates that "even assuming" that a particular claimed feature was novel does not "avoid the problem of abstractness." *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1263 (Fed. Cir. 2016).

Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs*, 838 F.3d at 1257 (citation omitted).

Turning to the claimed invention, claim 1 recites "[a] system for effectuating electronic payments using a credit transfer via an Electronic Funds Transfer (EFT) network." Claim 1 (preamble). The system of claim 1 further includes "[an] account system . . . embodied in a processing system," "a bank interface," "a customer interface [that] establish[es] an interface with a first customer . . . accept[s] a command from the first

customer to transfer funds from the first customer's . . . account to an . . . account of another customer, the command including account information [of the first customer and] transfer[s] the command to the . . . account system." Claim 1. The system of claim 1 further recites a receive-only virtual private locker (VPL) as the payment account of "another customer," and also requires the account system to receive a command, receive account information, and send a verification message to the electric payment account. *Id.*

The Examiner concludes the appealed claims are directed to a judicial exception, i.e., an abstract idea without significantly more than the abstract ideas of a "fundamental economic practice" (Final Act. 2), and "organizing human activity," e.g., similar to "managing a game of Bingo in *Planet Bingo*, and processing loan information in *Dealertrack*."⁴ Final Act. 6.

Under step one, we agree with the Examiner that the inventions claimed in each of independent claims 1, 43, 61, and 75 are directed to an abstract idea, i.e., methods of organizing human activity, particularly human activity associated with effectuating payments using a credit transfer. *See* Final Act. 2–4; Ans. 2–3.

As the Specification describes, "[t]he present invention generally relates to systems and methods for conducting electronic commerce, and more particularly to systems and method for processing real time payments

⁴ *See Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005, 1008 (Fed.Cir.2014) (“managing a game of Bingo”); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315 (Fed. Cir. 2012).

between consumer accounts." Spec. ¶ 2. The Abstract similarly describes processing payments between user accounts.⁵

We find this type of activity, i.e., processing payments using credit transfers, and notwithstanding that the claims on appeal rely upon computer technology for implementation, includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("That purely mental

⁵ The Abstract discloses:

A system and method for effectuating Electronic Funds Transfer credit messages. The main structural components of the system include a Payment Portal Processor (Web Broker), an Internet Pay Anyone (IPA) Account, a Virtual Private Lockbox (VPL) and an associated Account Reporter, the existing EFT networks, and a cash card for accessing a VPL or IP account. The Web Broker is a software application that provides a secure portal for accessing (linking to) either the user's Demand Deposit Account (DDA) or an IPA account and can be combined with the functionality of a traditional digital Wallet. Consumers use a Web Broker enhanced Wallet to fund their account, shop on the web, pay bills, pay anyone, store electronic receipts and transaction history, and check their recent Web Broker enhanced Wallet activity. The IPA account is a special purpose account with limited functionality for making electronic payments in the form of EFT credit messages. The VPL is a limited function receive only account for receiving electronic payments through the EFT. The Account Reporter is a portal to view transaction history and balance of IP A and VPL accounts, provide online, real-time transaction reports, and to reconciles accounts receivable/purchase records against incoming EFT payment records. A physical card can be associated with either an IPA or VPL account in order to provide PIN debit capability.

processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.").⁶

Our reviewing court has previously held other patent claims ineligible for reciting similar abstract concepts. For example, while the Supreme Court has enhanced the § 101 analysis since *CyberSource* in cases like *Mayo* and *Alice*, they continue to "treat[] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (alteration in original) (quoting *Elec. Power Grp.*, 830 F.3d at 1354).

In this regard, the claims are similar to claims our reviewing court has found patent ineligible in *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting information and "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category").

Therefore, in agreement with the Examiner, we conclude claim 1 involves nothing more than processing payments between accounts, without any particular inventive technology — an abstract idea. See *Elec. Power Grp.*, 830 F.3d at 1354. We further refer to *Content Extraction*, where the Federal Circuit has provided additional guidance on the issue of statutory subject matter by holding claims to collecting data, recognizing certain data within the collected data set, and storing that recognized data in memory were directed to an abstract idea and therefore unpatentable under § 101.

⁶ *CyberSource* further guides that "a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *CyberSource*, 654 F.3d at 1373.

Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A., 776 F.3d 1343 (Fed. Cir. 2014).

Accordingly, on this record, and under step one of *Alice*, we agree with the Examiner's conclusion the claims are directed to an abstract idea.

Alice Step 2 —Inventive Concept

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the "inventive concept" step. For that step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

In applying step two of the *Alice* analysis, our reviewing court guides we must "determine whether the claims do significantly more than simply describe [the] abstract method" and thus transform the abstract idea into patentable subject matter. *Ulramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). We look to see whether there are any "additional features" in the claims that constitute an "inventive concept," thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 134 S. Ct. at 2357. Those "additional features" must be more than "well-understood, routine, conventional activity." *Mayo*, 566 U.S. at 79.

In arguing under Step 2 of the *Alice* analysis, Appellants allege the claims are directed to statutory subject matter because "[r]egardless, even if the claims were directed to an abstract idea — which they are not — these claims result in an improvement to the functioning of the computer or device

that is implementing the method." App. Br. 12. In support of this contention, Appellants additionally argue:

For example, the alleged abstract idea of "effectuating electronic payment using a credit transfer" does not contemplate, for example, the interactions involved with the virtual private locker ("VPL"), including the verification of the VPL, for example, "sending, through the EFT network, a verification message to the electronic payment account of the another customer to verify the VPL's existence and identity" and "receiving from the VPL a response message that includes a description of an owner of the VPL." *See, e.g.*, Claim 1. Moreover, claim 1 recites that "the pushing of funds, without the account information of the first customer, is constituted by the payee not being provided with information such that the payor account is identifiable to the payee."^[1] Thus, these claim elements — which are meaningful limitations — amount to "significantly more" than "effectuating electronic payment using a credit transfer."

App. Br. 13. Appellants further argue "the claimed computer processor is integral to the claimed invention." App. Br. 14.

In response to Appellants' argument that the "process of the claimed invention could not occur absent a computer," we agree with the Examiner's analysis:

[T]he test of eligibility is not based on whether the claimed invention could only be carried out with a computer. Rather, when using a generic computer, the test is whether the claimed invention does effect an improvement to another technology or technical field; whether the claimed invention does amount to an improvement to the functioning of a computer itself; and whether the claimed invention does move beyond a general link of the use of an abstract idea to a particular technological environment. In this instant case, the claimed invention does not meet any of the aforementioned criteria. The technology implemented in the instant application is useful to solve a

business problem, but the additional elements are not a technological solution to a technological problem, or a solution to a problem introduced by the technology itself.

Ans. 3–4.

Evaluating representative claim 1 under Step 2, we agree with the Examiner that it lacks an inventive concept that transforms the abstract idea of effectuating payments using a credit transfer into a patent-eligible application of that abstract idea. *See* Ans. 3–4.

We agree with the Examiner because, as in *Alice*, we find the recitation of effectuating electronic payments using a credit transfer via "an Electronic Funds Transfer (EFT) network" (claims 1 and 43); or "effectuating an electronic payment between a payor and a payee using a credit transfer to the payee via an Electronic Funds Transfer (EFT) network" (claims 61 and 75) are simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2357 ("[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.").

We conclude that utilizing a virtual private locker (VPL) and verifications within an EFT network (*see* App. Br. 13) does not provide "significantly more" as suggested by the Step 2 *Alice* analysis and, on this record, does not improve the underlying computer/network technology.⁷

⁷ As evidence of the conventional nature of the claimed network components and processes, we highlight Appellant's Specification, e.g., in paragraphs 52 and 53:

Figure 2 further illustrates the main structural components of the present invention. Element 200 represents the device through which the consumer accesses the Internet. In a preferred embodiment, the workstation 200 is a Personal Computer (PC) loaded with an Internet

Further, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

Accordingly, based upon the analysis above, on this record, we are not persuaded of error in the Examiner's conclusion that the appealed claims are directed to patent-ineligible subject matter. Therefore, we sustain the Examiner's § 101 rejection of independent claim 1, and grouped claims 2–88 and 91–94, which fall therewith. *See Claim Grouping, supra.*

browser 210 such as Netscape™ Navigator™ or Microsoft™ Internet Explorer™. In alternative embodiments, the user can access the Internet using any Internet ready device such as a web enabled ATM machine or a Personal Digital Assistant (PDA) such as a Palm Pilot™, a cell phone or an interactive TV. The present invention is not limited by any particular physical device and can employ any device that provides access to the Internet. For example a public kiosk which provides access to the Internet can be used to practice the present invention. Each of these devices will have at least one processor.

Spec. ¶ 52.

Using thin wallet technology, the majority of software and databases comprising the Wallet 215 resides on a host web server, employing at least one processor, and the user accesses the Wallet 215 through a website or a button (e.g., icon) on the Browser 210. . . . In addition to PC-based access as described above, the Wallet 215 can be downloaded to various non-PC devices such as PDAs, cellular telephones, and interactive TV's.

Spec. ¶ 53. We find this to be conventional computer hardware/technology.

REPLY BRIEF

To the extent Appellants *may* advance new arguments in the Reply Brief (Reply Br. 2–6) not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause (*see* 37 C.F.R. § 41.41(b)(2)), which Appellants have not shown.

CONCLUSION

The Examiner did not err with respect to the patent-ineligible subject matter rejection of claims 1–88 and 91–94 under 35 U.S.C. § 101, and we sustain the rejection.

DECISION

We affirm the Examiner's decision rejecting claims 1–88 and 91–94.

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