



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/210,980	09/15/2008	Dennis Rakhimov	60152-0022	7595
115191	7590	03/27/2018	EXAMINER	
Hickman Palermo Becker Bingham / Palantir 1 Almaden Boulevard, Floor 12 San Jose, CA 95113			KHATTAR, RAJESH	
			ART UNIT	PAPER NUMBER
			3693	
			NOTIFICATION DATE	DELIVERY MODE
			03/27/2018	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usdoCKET@h35g.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* DENNIS RAKHAMIMOV and ERIC POIRIER<sup>1</sup>

---

Appeal 2017-000017  
Application 12/210,980  
Technology Center 3600

---

Before ST. JOHN COURTENAY III, JOHNNY A KUMAR, and  
CATHERINE SHIANG, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 3–12, 14–19, 21–23, 25, 26, 28–30, and 32–36, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

*Introduction*

According to the Specification, the present invention relates to techniques for analyzing large data sets. *See generally* Spec. 1. Claim 1 is exemplary:

---

<sup>1</sup> Appellants identify the Real Party in Interest as Palantir Technologies, Inc.

1. A computer-implemented method comprising:

using dynamic indexing logic programmed in an application server computer, causing displaying at a client computer a single graphical user interface window that provides a) first graphical user controls for selecting a query for identifying, when the query is evaluated, a set of market instruments to be included in an index, b) second graphical user interface controls for selecting how market instruments included in the index are to be weighted, and c) third graphical user interface controls for selecting how individual market values of market instruments included in the index are to be determined;

wherein at least one of the second graphical user interface controls specifies using a computational metric that defines a function that can operate on the first instruments as input and yield metric output values;

using the application server computer, based on one or more user selections made through a) the first graphical user interface controls, identifying, at a first time, a plurality of first instruments to be included in the index;

using the application server computer, based on one or more user selections made through b) the second graphical user interface controls, determining a plurality of first weights based on computing the metric output values for the instruments using the function and wherein each of the first weights is associated with a different instrument in the first instruments;

wherein the first instruments are identified based on evaluating the query at the first time;

using the application server computer, based on one or more user selections made through c) the third graphical user interface controls, determining a plurality of first time series for the first instruments;

wherein the first time series comprise individual market values of the first instruments over a time period of the index, the time period of the index having a start time;

tracking, based on the first time series and the first weights, a collective value of the index as a function of time at least from the start time;

storing, in a physical storage device, at least one of a) the first weights and the start time, and b) the collective value as the function of the time; and

using the application server computer, causing displaying, in the graphical user interface window of the client computer, a chart of the collective value of the index as a function of time from at least from the start time;

using the application server computer, evaluating the same query at a second time to determine one or more second instruments to be included in the index at the second time.

### *Rejection*

Claims 1, 3–12, 14–19, 21–23, 25, 26, 28–30, and 32–36 are rejected under 35 U.S.C. § 101 because they are directed to patent-ineligible subject matter.

### ANALYSIS

We disagree with Appellants' arguments, and agree with and adopt the Examiner's findings and conclusions in (i) the action from which this

appeal is taken (Final Act. 2–8) and (ii) the Answer (Ans. 2–8) to the extent they are consistent with our analysis below.<sup>2</sup>

On this record, the Examiner did not err in rejecting claim 1.

The Examiner rejects the claims under 35 U.S.C. § 101 because they are directed to patent-ineligible subject matter. *See* Final Act. 2–8; Ans. 2–8. In particular, the Examiner concludes the claims are directed to the abstract idea of a fundamental economic practice. *See* Final Act. 2–3; Ans. 3. The Examiner further finds the claims use generic computer components to perform generic computer functions. *See* Final Act. 3–4; Ans. 4–5.

Appellants argue the Examiner erred. *See* App. Br. 4–21; Reply Br. 1–8.

Appellants have not persuaded us of error. Section 101 of the Patent Act provides “[w]hoever 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 therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. That provision “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). According to the Supreme Court:

[W]e set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, we then ask,

---

<sup>2</sup> To the extent Appellants advance new arguments in the Reply Brief without showing good cause, Appellants have waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

“[w]hat else is there in the claims before us?” . . . To answer that question, we consider 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. . . . We have described step two of this analysis as a 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.”

*Alice Corp.*, 134 S. Ct. at 2355.

The Federal Circuit has described the *Alice* step-one inquiry as looking at the “focus” of the claims, their “character as a whole,” and the *Alice* step-two inquiry as looking more precisely at what the claim elements add—whether they identify an “inventive concept” in the application of the ineligible matter to which the claim is directed. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Regarding *Alice* step one, the Federal Circuit has “treated *collecting information*, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Elec. Power*, 830 F.3d at 1353 (emphasis added); *see also Internet Patents*, 790 F.3d at 1348–49; *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). “In a similar vein, we have treated *analyzing information* [including manipulating information] by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the

abstract-idea category.” *Elec. Power*, 830 F.3d at 1354 (emphasis added); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016). “And we have recognized that *merely presenting the results of abstract processes of collecting and analyzing information, without more* (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Elec. Power*, 830 F.3d at 1354 (emphasis added); *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714–15 (Fed. Cir. 2014).

The rejected claims “fall into a familiar class of claims ‘directed to’ a patent-ineligible concept.” *Elec. Power*, 830 F.3d at 1353. Contrary to Appellants’ arguments (App. Br. 4–13; Reply Br. 1–4), the claims are similar to the claims of *Electric Power*, and are focused on the combination of abstract-idea processes or functions. *See Elec. Power*, 830 F.3d at 1354. For example, claim 1 is directed to displaying information (“causing displaying . . .”), analyzing information (“identify . . .”; “determining . . .”; “tracking . . .”; “evaluating . . .”), and collecting information (“storing . . .”). Claims 19 and 26 are directed to similar functions of displaying, analyzing, and collecting information. *See Elec. Power*, 830 F.3d at 1353.<sup>3</sup> The dependent claims are directed to similar functions or processes, and Appellants have not shown such claims are directed to other non-abstract functions or processes. *See* claims 3–12, 14–18, 21–23, 25, 28–30, and 32–36. Appellants list certain limitations of claims 1 and 7 (App. Br. 10–11),

---

<sup>3</sup> Contrary to Appellants’ assertion (App. Br. 9), the Examiner does not merely determine claim 1 is directed to creating a contract. Instead, the Examiner determines, and we agree, the claims are directed to a fundamental economic practice, and are directed to the abstract steps or functions recited in the claims and discussed above. *See* Final Act. 2–3; Ans. 3.

but do not persuasively explain why those steps are not directed to the abstract processes discussed above. *See* App. Br. 10–11. In particular, the additional steps of dependent claim 7 are directed to the abstract idea of collecting information (“receiving . . .”) and analyzing information (“rebalancing . . .”).

Further, Appellants’ assertion regarding pre-emption (App. Br. 5–7; Reply Br. 1–2) is unpersuasive, because “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility. . . . Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP*, 788 F.3d at 1362–63 (“that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract”).

In addition, Appellants’ argument regarding prior art rejection (App. Br. 17) is unpersuasive, as prior art rejection is determined under 35 U.S.C. §§ 102–103, which are different statutory requirements. As the Supreme Court emphasizes: “[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) (emphasis added). Our reviewing court further guides that “[e]ligibility and novelty are separate inquiries.” *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017).

Regarding *Alice* step two, contrary to Appellants’ assertion (App. Br.



13–21; Reply Br. 4–8), Appellants have not shown the claims in this case require an arguably inventive set of components or methods, or invoke any assertedly inventive programming. *See Elec. Power*, 830 F.3d at 1355.

Further, contrary to Appellants’ arguments (App. Br. 13–21; Reply Br. 4–8), the claims are similar to the claims of *Electric Power*, because they do not require any nonconventional computer, network, or display components, or even a “non-conventional and non-generic arrangement of known, conventional pieces,” but merely call for performance of the claimed information collection, analysis, and display functions on generic computer components and display devices. *See Elec. Power*, 830 F.3d at 1355; *see also* Claim 1 (reciting “an application server computer . . . a client computer . . . a physical storage device”); Claim 19 (reciting “an application server computer . . . a client computer . . . a physical storage device”); Claim 26 (reciting “an application server computer . . . a network interface . . . a data network . . . a processor . . . a client computer . . . a physical storage device”). The dependent claims call for similar generic components and devices, and Appellants have not shown such claims require any non-conventional components or devices. *See* claims 3–12, 14–18, 21–23, 25, 28–30, and 32–36. Appellants list certain steps recited in claims 1, 7, 8, and 17 (App. Br. 19–21), but do not persuasively explain why such steps require an arguably inventive set of components or methods, or invoke any assertedly inventive programming. *See Elec. Power*, 830 F.3d at 1355. As discussed above, those steps merely call for performance of the claimed information collection and analysis on generic computer components. *See* claims 1, 7, 8, and 17.

Appellants refers to *Bascom Global Internet Services, Inc. v. AT&T*

*Mobility LLC*, 827 F.3d 1341 (2016) (Reply Br. 7 6–7), but do not persuasively explain why that case is similar to the present case. As discussed above, the rejected claims are similar to the claims of *Electric Power*, and they do not “require an arguably inventive distribution of functionality within a network, thus distinguishing the claims at issue from those in *Bascom*[.]” *Elec. Power*, 830 F.3d at 1355; see also *Bascom Global Internet Services*, 827 F.3d at 1350 (construed in favor of the nonmovant at pleading stage, finding a sufficient inventive concept in “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user”). Similar to the claims of *Electric Power*, the rejected claims specify what information is desirable to display, analyze, and gather, but they “do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying . . . by use of anything but entirely conventional, generic technology.” *Elec. Power*, 830 F.3d at 1355. Therefore, similar to the claims of *Electric Power*, the rejected claims “do not state an arguably inventive concept in the realm of application of the information-based abstract ideas.” *Elec. Power*, 830 F.3d at 1356. Appellants cite paragraph 90 of the Specification, which describes manipulating data using conventional, generic data analysis and manipulation technology in an *exemplary* embodiment. And Appellants’ argument regarding that *example* is not commensurate with the scope of the claim, as claim 1 does not recite “dynamic weight creation and dynamic rebalancing,” as Appellants assert (Reply Br. 7).

Finally, *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) is inapplicable here. In *DDR Holdings*, the Court found:

the claims at issue here specify how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Instead of the computer network operating in its normal, expected manner by sending the website visitor to the third-party website that appears to be connected with the clicked advertisement, the claimed system generates and directs the visitor to the above-described hybrid web page that presents product information from the third-party and visual “look and feel” elements from the host website. When the limitations of the ‘399 patent’s asserted claims are taken together as an ordered combination, the claims recite an invention that is not merely the routine or conventional use of the Internet.

*DDR Holdings*, 773 F.3d at 1258–59.

This case is distinguished from *DDR* because as discussed above, the claims here recite inventions that are merely the routine or conventional use of the technology—the opposite of what the claims of *DDR* represent. *See DDR Holdings*, 773 F.3d at 1258–59.

In short, Appellants have not shown the claims, read in light of the Specification, require anything other than conventional computer, network, and display technology for collecting, analyzing, and presenting the desired information. *See Elec. Power*, 830 F.3d at 1354. Such invocations of computers and networks are “insufficient to pass the test of an inventive concept in the application” of an abstract idea. *See Elec. Power*, 830 F.3d at 1355.

Because Appellants have not persuaded us the Examiner erred, we sustain the Examiner’s rejection of claims 1, 3–12, 14–19, 21–23, 25, 26, 28–30, and 32–36 under 35 U.S.C. § 101.

Appeal 2017-000017  
Application 12/210,980

DECISION

We affirm the Examiner's decision rejecting claims 1, 3–12, 14–19, 21–23, 25, 26, 28–30, and 32–36.

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