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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN L. SEAWALL

Appeal 2017-000109
Application 13/792,110¹
Technology Center 3600

Before JOHN A. EVANS, CATHERINE SHIANG, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Non-Final Rejection of claims 1–3 and 5–20, which constitute all of the claims pending in this application. Claim 4 has been cancelled. Non-Final Act. 2. We have jurisdiction under 35 U.S.C. § 6(b). *See* 37 C.F.R. § 41.31(a)(1) (“Every applicant, any of whose claims has been twice rejected, may appeal from the decision of the examiner to the Board.”).

We affirm.

¹ Appellant identifies the applicant, Stephen L. Seawall, as the real party in interest. App. Br. 3.

THE INVENTION

The disclosed and claimed invention is directed to a systems and methods for financial accounting. Spec. ¶ 1.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computerized accounting system comprising a memory defining a data warehouse, a processor in communication with the memory, and a communications interface coupled to the processor and memory, for user input, the system being configured to record single entry transactions, in the data warehouse, including transactions for cash receipts, cash disbursements, accounts payable, payroll payable, and legal commitments and to generate, using the processor, in response to a selection by a user, using the communications interface, made after the transactions have been recorded in the memory, a selected one of a cash basis statement including, for a period, beginning cash balance, cash receipts, cash disbursements, and ending cash balance, and a budgetary basis statement including, for a period, beginning uncommitted cash, receipts, expenditures, including legal commitments, and uncommitted cash.

REFERENCES

The prior art relied upon by the Examiner as evidence in rejecting the claims on appeal is:

McCarthy, Jr.	US 2006/0089889 A1	Apr. 27, 2006
Salleh	US 2008/0286728 A1	Nov. 20, 2008
Olaiya et al.	US 8,055,536 B1	Nov. 8, 2011
Zubizarreta et al.	US 2013/0046573 A1	Feb. 21, 2013
Basu et al.	US 2013/0179313 A1	July 11, 2013

State of South Carolina Blueprint GAP, 1.2 Definition of Organizational Structures and Financial Master Data (hereinafter “SCEIS”).

Thawan Baig, “Conversion from Single entry to Double entry,” <https://www.slideshare.net/thawban/conversion-from-single-entry-to-double-entry03> (Sept. 27, 2011) (hereinafter “Baig”).

“How to Convert Cash Basis to Accrual Basis Accounting,” Accountingtools.com (Nov. 4, 2011) (hereinafter “Accounting Tools2”).

Oracle, “PeopleSoft Enterprise General Ledger 9.1 PeopleBook,” (Nov. 2009) (hereinafter “GL91”).

Letter from Matthew R. Serakowski, Township Manager, Township Upper St. Clair to Board of Commissioners, Township Upper St. Clair (Dec. 6, 2010), <http://www.twpusc.org/finance/pdf/2011-Adopted-Budget.pdf> (hereinafter “St. Clair”).

Oracle, “Setting Up the General Accounting System,” (hereinafter “Oracle”).

REJECTIONS

Claims 1–3 and 5–20 stand rejected under 35 U.S.C. § 101 because the claims are directed to patent-ineligible subject matter. Non-Final Act. 4–5.

Claims 1 and 2 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh and McCarthy. Non-Final Act. 5–14.

Claim 3 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, and Baig. Non-Final Act. 14–18.

Claims 5 and 6 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, and Applicant Admitted Prior Art. Non-Final Act. 18–20.

Claims 7–9 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, Olaiya, and GL91. Non-Final Act. 20–24.

Claims 10 and 11 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, Olaiya, and Applicant Admitted Prior Art. Non-Final Act. 24–25.

Claim 18 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, and St. Clair. Non-Final Act. 25–26.

Claims 19 and 20 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, St. Clair, and Oracle. Non-Final Act. 26–29.

Claim 12, 13, and 15 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, Baig, and Zubizarreta. Non-Final Act. 29–35.

Claim 16 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of GL91, Olaiya, Salleh, Applicant Admitted Prior Art, and McCarthy. Non-Final Act. 35–37.

Claim 17 stands rejected under pre-AIA 35 U.S.C. §103(a) as being unpatentable over SCEIS in view of GL91, Olaiya, Salleh, McCarthy, Baig, and Basu. Non-Final Act. 37–40.

Claim 14 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over SCEIS in view of Salleh, McCarthy, Baig, Accounting Tools2, and Basu. Non-Final Act. 41.

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellant's arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments made by Appellant. We are not persuaded by Appellant's arguments regarding the Examiner's rejection of the claims under section 101. However, we are persuaded that, based on the current record, the Examiner erred in rejecting the claim under section 103.

Patent-Ineligible Subject Matter

The Alice/Mayo Framework

Patent-eligible subject matter is defined in § 101 of the Patent Act, which recites: "Whoever 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."

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in § 101: laws of nature, natural phenomena, and abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70–71 (2012). Although an abstract idea, itself, is patent-ineligible, an application of the abstract idea may be patent-eligible. *Alice*, 134 S. Ct. at 2355. Thus, we must 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.” *Id.* (citing *Mayo*, 566 U.S. 79). The claim must contain elements or a combination of elements that are “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [abstract idea] itself.” *Id.* (citing *Mayo*, 566 U.S. 79).

The Supreme Court set forth a two-part “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.

First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. [*Mayo*,] 132 S. Ct., at 1296–1297. If so, we then ask, “[w]hat else is there in the claims before us?” *Id.*, at —, 132 S. Ct., at 1297. 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. *Id.*, at —, 132 S. Ct., at 1298, 1297. 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.” *Id.*, at —, 132 S. Ct., at 1294.

Id.

“The ‘abstract idea’ step of the inquiry calls upon us to look at 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 Tex. v. DirectTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); *see also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). There is no definitive rule to determine what constitutes an “abstract idea.” Rather, the Federal Circuit has explained that “both [it] and

the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.” *Enfish*, 822 F.3d at 1334; *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (explaining that, in determining whether claims are patent-eligible under § 101, “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided”).

Under the second step of the *Alice/Mayo* framework, we examine the claim limitations “more microscopically,” *Electric Power*, 830 F.3d at 1354, to determine whether they contain “additional features” sufficient to “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355, 2357 (quoting *Mayo*, 566 U.S. at 78). “[M]ere recitation of concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract idea. Rather, the components must involve more than performance of ‘well-understood, routine, conventional activit[ies]’ previously known to the industry.” *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2359).

In re Alappat Has Been Superseded

Appellant’s first argument ignores the *Alice/Mayo* framework and instead, relies on *In re Alappat*, 33 F.3d 1526 (Fed. Cir. 1993). App. Br. 11. According to Appellant, *Alappat* holds that “programming creates a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions

pursuant to instructions from program software.” App. Br. 11 (quoting *Alappat*, 33 F.3d at 1545). Appellant further argues that the Federal Circuit and the USPTO “have long acknowledged that ‘improvements thereof’ through interchangeable software or hardware enhancements deserve patent protection.” *Id.* (quoting *Alappat*, 33 F.3d at 1545). Therefore, according to Appellant, “the programming required for the implementation of claims 1–3 and 5–20 of the present application create a new machine equivalent in patent eligibility to that of hardware circuits” and the claims are patent-eligible. *Id.*

However, Appellant’s reliance on *Alappat* is misplaced. The Federal Circuit has held “that *Alappat* has been superseded by *Bilski* [v. Kappos, 561 U.S. 593, 605–06 (2010)], and *Alice*.” *Eon Corp. IP Holdings LLC v. AT&T Mobility LLC*, 785 F.3d 616, 623 (Fed. Cir. 2015).

Abstract Idea

The Examiner concluded the claims are directed to abstract ideas relating to methods of accounting:

For example, claim 1 is directed to the abstract idea of recording accounting transactions and generating financial statements. Claim 11 is directed to the abstract idea of making accounting adjustments, reporting, and generating financial statements. Claim 17 is directed to the abstract idea of receiving accounting data generating accounting data in a payroll system.

Non-Final Act. 4; *see also id.* at 3 (“The [E]xaminer understands these to be abstract ideas (ie. methods of accounting).”). The Examiner further determines that accounting involves “collecting, storing and processing financial data” and that the claims are similar to claims courts have

previously found to be directed to abstract idea. Ans. 2–3 (citing *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n.*, 776 F.3d 1343 (Fed. Cir. 2014)). Additionally, the Examiner determines the claim do not address an issue in computerized accounting and, instead, the claim are directed to “abstract ideas that predate computing/Internet and could be manually practiced by a human accountant.” *Id.* at 3.

Appellant argues the Examiner failed to make a prima facie case. App. Br. 12, 14. More specifically, Appellant argues that a proper rejection requires a comparison of the claimed invention to “concepts to prior court decisions to identify a law of nature, a natural phenomenon, or an abstract idea.” *Id.* at 14. Appellant further argues that Examiner has not identified the abstract idea as recited in the claim. Reply Br. 3–5.

We are not persuaded by Appellant’s argument that the Examiner erred. The Examiner identifies the abstract idea and states that it is something that could be performed by a human mind. *See* Ans. 3. Although the Examiner did not explicitly cite a court case, the Examiner describes the reasoning used by the Federal Circuit in *CyberSource Corp. v. Retail Decisions, Inc.*:

Thus, claim 3’s steps can all be performed in the human mind. Such a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101. Methods which can be performed entirely in the human mind are unpatentable not because there is anything wrong with claiming mental method steps as part of a process containing non-mental steps, but rather because computational methods which can be performed *entirely* in the human mind are the types of methods that embody the “basic tools of scientific and technological work” that are free to all men and reserved exclusively to none.

CyberSource Corp. v. Retail Decisions, Inc., 654 F.3d 1366, 1373 (Fed. Cir. 2011) (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)) (footnote omitted)).

Moreover, in the Answer the Examiner identifies *Contract Extraction* as an analogous case. Appellant does not address that determination in the Reply Brief or demonstrate why it is incorrect. “If an [A]ppellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.” *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

Appellant also asserts that “[i]f the Office is taking the position that all patent claims including software are abstract, the Office is mistaken.” App. Br. 14. Because neither the Examiner nor the Office has taken that position, we are not persuaded by Appellant’s strawman argument that the Examiner erred.

Accordingly, we agree with the Examiner that the claims are directed to an abstract idea.

Significantly More

The Examiner determines that the claims “do[] not include additional elements that are sufficient to amount to significantly more than the judicial exception because the computer as recited is a generic computer component that performs functions.” Final Act. 4. The Examiner further determines those functions “are generic computer functions (i.e., record keeping, obtaining data, adjusting balances, reporting statements) that are well-understood, routine, and conventional activities previously known to the

industry.” Final Act. 4. The Examiner also determines even if there is some memory improvement from using the claimed invention, “recording of single entries and conversion to double was already known in the art [and] . . . the improvement described is at best ancillary to the inventive concept and [there is] a performance tradeoff.” Ans. 4.

Appellant argues the claims recite “more than routine conventional activities previously known to industry are being performed by computer.” App. Br. 15. According to Appellant, the specific limitations recited in the claim are not known to the industry. *Id.*; *see also id.* at 16 (“Additional reasons why more than routine conventional activities previously known to industry are being performed by the computer will be provided below in connection with the arguments below against the rejections under 35 U.S.C. § 103.”); Reply Br. 6 (“Appellant’s invention adds new and inventive concepts to financial accounting and reporting technology. . . . Embodiments of Appellant’s invention contain significantly more computer function than is recognized in prior art or by the courts as being well-understood, routine, or conventional, as will also be shown in the following section.”).

We are not persuaded by Appellant’s argument that the Examiner erred. Although the second step in the *Alice/Mayo* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “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*, 134 S. Ct. at 2355. A novel and nonobvious claim

directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Appellant further argues that the claimed invention, like the one in *DDR Holdings, LLC v. Hotel.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), recites a “solution . . . rooted in computer technology in order to overcome a problem specifically arising in the realm of computerized accounting systems—how to be able to generate statements using different bases of accounting, such as cash basis and budgetary basis, from stored data.” App. Br. 15–16. According to Appellant, “Appellant has not merely taken a known financial accounting method and automated it.” Reply Br. 6.

We are not persuaded by Appellant’s arguments. First, as our reviewing court held in *DDR*, “not all claims purporting to address Internet-centric challenges are eligible for patent.” *DDR*, 773 F.3d at 1258. As the Federal Circuit recognized:

For example, in our recently-decided *Ultramerical*² opinion, the patentee argued that its claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” 772 F.3d at 714. But this alone could not render its claims patent-eligible. In particular, we found the claims to merely recite the abstract idea of “offering media content in exchange for viewing an advertisement,” along with “routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.” *Id.* at 715–16.

Id. Because Appellant has merely identified routine additional steps, they are insufficient to render the claims patent-eligible.

² *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014), *vacated and remanded*, *WildTangent, Inc. v. Ultramerical, LLC*, 134 S. Ct. 2870 (2014) (remanding for consideration in light of *Alice*, 134 S. Ct. 2347).

Moreover, we disagree with that the claims in this case are directed to a computer-centric problem similar to that in *DDR*. In *DDR*, the Court found that the claims “do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.* at 1257. Unlike the claims in *DDR*, we agree with and adopt the Examiner’s determination that the claims in this case are merely adopting a pre-existing business practice, in this case using methods of accounting and generating reports, for use with computer technology. *See* Non-Final Act. 3–4.

Instead of *DDR*, this case is similar to *Electric Power*, in which our reviewing court found the claims patent-ineligible because “[t]he claims at issue 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 a set of generic computer components’ and display devices.” *Electric Power*, 830 F.3d at 1355 (citing *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)). Similarly, the claims in this case merely recite the use of generic computer components to generate financial reports. Such an arrangement is not patent eligible. *Id.*

Appellant also argues that the recited invention “improve[s] the functioning of the computer in that less memory is required because databases include single entry data instead of double entry data such that data is not duplicated for each entry. In addition, data is not duplicated for

multiple bases of accounting.” App. Br. 18. According to Appellant, because the functioning of the computer itself is improved, the claim recites significantly more. *Id.* (citing *Alice*, 134 S. Ct. 2347).

We are not persuaded by Appellant’s argument that the Examiner erred. It is well settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (attorney argument is not evidence). Appellant cites to neither evidence nor support in the Specification for the supposed memory improvement. Nor does Appellant attempt to quantify the amount of the improvement or discuss any negative tradeoffs associated with the claimed invention.³

Finally, Appellant argues that the claims “do not pre-empt the entire field of financial accounting.” Reply Br. 6. However, although the extent of preemption is a consideration, the absence of complete preemption is not dispositive. *See, e.g., Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”); *Ultramercial*, 722 F.3d at 1346.

Accordingly, we sustain the Examiner’s rejection of claims 1–3 and 5–20 as unpatentable under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

³ In the Reply Brief, Appellant asserts the Examiner’s response to this argument is based on an improper claim construction. *See* Reply Br. 5–6. Because we do not rely on the Examiner’s claim construction, that argument is moot.

Prior Art Rejections

Appellant argues the Examiner erred in finding a reason to combine the teachings of SCEIS and Salleh. App. Br. 19.⁴ More specifically, Appellant asserts that although “SCIES discloses a double entry accounting methodology,” “Salleh relates to a teaching methodology.” *Id.* at 17, 19. Appellant further argues that “because one of ordinary skill in the art looking to improve an accounting system would not look to a teaching methodology,” a person of ordinary skill in the art would not have combined the references. *Id.* at 19.

The Examiner finds “Salleh is directed to an accounting simulator which allows a student to experience an entire accounting cycle and generate financial statements.” Non-Final Act. 9. The Examiner further finds that a person of ordinary skill in the art would have combined the teachings of Salleh with the teaching of SCEIS “with the motivation of performing all processes involved in financial statements.” *Id.* at 10 (citing Salleh, abstract).

“In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness.” *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). Rejections based on obviousness must be supported by “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR Int’l Co. v. Teleflex Inc.*,

⁴ Although we focus on Appellant’s arguments regarding claim 1, because the Examiner relies on, *inter alia*, a combination of Salleh and SCEIS for all of the pending claims, our reasoning applies equally to all of the pending claims.

550 U.S. 398, 418 (2007). Based on the current record and the Examiner's findings, we agree with Appellant that the Examiner did not provide a sufficient reasoning as to why the person of ordinary skill in the art would have taken specific teachings from the accounting simulator taught in Salleh with the accounting methodology of SCEIS. The mere fact that a teaching simulator teaches single entry data entry is not a sufficiently articulate reasoning to support a finding of obviousness. *See Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Because this argument is dispositive, we need not reach the merits of Appellant's other arguments.

Accordingly, we are constrained on this record to reverse the Examiner's rejection of claims 1–3 and 5–20 as unpatentable under 35 U.S.C. § 103(a).

DECISION

For the above reasons, we affirm the Examiner's decision rejecting claims 1–3 and 5–20 under 35 U.S.C. § 101.

For the above reasons, we reverse the Examiner's decisions rejecting claims 1–3 and 5–20 under 35 U.S.C. § 103(a).

Because we affirm at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner's decision to reject all of the pending claims.

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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