



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.
13/733,628	01/03/2013	Yunas Nadiadi	0409-US-U3	8014

83579 7590 12/18/2018
LEVEL 3 COMMUNICATIONS, LLC
Attn: Patent Docketing
1025 Eldorado Blvd.
Broomfield, CO 80021

EXAMINER

MISIASZEK, AMBER ALTSCHUL

ART UNIT	PAPER NUMBER
----------	--------------

3624

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

12/18/2018

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):

patent.docketing@level3.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YUNAS NADIADI, PAUL FARNSWORTH, JEFF STOREY,
AJIT K. RAO, ERIC D. GUNDERSEN, ALLEN E. DIXON, SANJIV
KUMAR, RENE GRIPPO, LUKE PHILIPS, OMPRAKASH MISHRA,
RAJIV K. SINGH, and CHRIS CUTTITTA¹

Appeal 2017-000613
Application 13/733,628
Technology Center 3600

Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1–21 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b). Oral arguments were presented on November 28, 2018 by telephone.

¹ Appellant is the Applicant, Level 3 Communications, LLC, which, according to the Appeal Brief, is the Real Party in Interest. App. Br. 2.

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellant's claimed invention is directed to a method and system to access, manage, and manipulate data for generating and converting sales opportunities (Spec., para. 2). Claim 8, reproduced below, is representative of the subject matter on appeal.

8. A method of sales prospecting and customer service optimization comprising:

accessing and presenting geographic information in relation to at least one technical infrastructure and in relation to at least one customer to which access to the at least one technical infrastructure would facilitate the provision of at least one service to the at least one customer;

displaying a presentation board including a pinup board and an asset browser, the pinup board including a plurality of asset locations where one or more presentation assets may be assembled to define the multimedia slideshow presentation, and the asset browser including a graphical display of a plurality of presentation assets that may be placed in the plurality of asset locations, wherein the plurality of presentation assets are displayed in the asset browser are selected from a remote database of presentation assets based on at the selected product or service for the at least one customer and the vertical market of the selected customer; and

providing an estimated cost for at least one product or service for the selected customer, the estimated cost being based on information associated with the presented product or service.

THE REJECTION

The following rejection is before us for review:

Claims 1–21 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence.²

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellant argues that the Examiner has failed to properly show that the claim is directed to non-statutory subject matter (App. Br. 6–14). The Appellant argues that the rejection of claim 8 is improper because the claim is not directed to an abstract idea (App. Br. 12, 13). The Appellant also argues that the claim includes significantly more than an alleged abstract concept (App. Br. 13).

In contrast, the Examiner has determined that the rejection of record is proper (Final Rej. 5–7, Ans. 2–14).

We agree with the Examiner. Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “laws of nature,

² See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 8 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–76 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* (internal quotations and citations omitted). This is a search for an “inventive concept” an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* (internal quotations and citation omitted). The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.* at 2358.

Here, we determine that the claim is directed to the concept of sales prospecting by providing cost estimates based on data associated with a product or service. This is a method of organizing human activities and a fundamental economic practice long prevalent in our system of commerce, and is an abstract idea beyond the scope of § 101. In *Versata Development Group, Inc. v. SAP America, Inc.*, 793 F.3d 1306, 1333 (Fed. Cir. 2015) determining a price, using organizational and product group hierarchies was held to be an abstract idea. In *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) where collecting information, analyzing it,

and displaying results from certain results of the collection and analysis was held to be an abstract idea. The Specification at para. 2 states that the method of the invention is directed to generating and converting sales opportunities.

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. The Specification at paras. 28–33 for instance discloses using conventional devices such as computing devices including a general purpose computer, wireless networks, and memory devices (RAM, ROM) in a conventional manner for their known functions.

We note the point about pre-emption (App. Br. 8). While pre-emption “‘might tend to impede innovation more than it would tend to promote it,’ thereby thwarting the primary object of the patent laws” (*Alice*, 134 S. Ct. at 2354 (quoting *Mayo*, 566 U.S. at 71)), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). *See also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701, (2015)(“[T]hat 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.”).

For these above reasons the rejection of claim 8, and its dependent claims which were not separately argued, is sustained.

We reach the same conclusion as to independent system claims 1 and 15 and their dependent claims which are drawn to similar subject matter. Here, as in *Alice*, “the system claims are no different in substance from the method claims. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea.” *Alice*, 134 S. Ct. at 2351. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea ‘while adding the words ‘apply it’ is not enough for patent eligibility.” *Id.* at 2358 (quoting *Mayo*, 566 U.S. at 72).

CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1–21 under 35 U.S.C. § 101.

Appeal 2017-000613
Application 13/733,628

DECISION

The Examiner's rejection of claims 1–21 is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED