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. |
|---|---|---|---|---|
| 13/225,085 | 09/02/2011 | Bruce D. Abramson | 404613 | 1781 |

23460 7590 12/25/2018

LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6731

| EXAMINER |
|---|
| POLLOCK, GREGORY A |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3695 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 12/25/2018 | 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):

Chgpatent@leydig.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* BRUCE D. ABRAMSON

---

Appeal 2017-000652
Application 13/225,085[1]
Technology Center 3600

---

Before ST. JOHN COURTENAY III, JOHN A. EVANS, and JASON J. CHUNG, *Administrative Patent Judges*.

CHUNG, *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 26–43.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention is directed to facilitating the completion of contracts for conditional or unconditional forward sales (CCUFSs) of retail goods via a CCUFS exchange, in combination with a distribution network for taking delivery on completed contracts. Abstract. Claim 26 is illustrative of the invention and is reproduced below:

---

[1] According to Appellant, Bruce D. Abramson is the real party in interest. Br. 1.

[2] Claims 1–25 are canceled. Br. 19.

26. A system for processing contractual transactions relating to retail goods and providing distribution of the retail goods pursuant to contractual terms, the system comprising:

a networked computing system including one or more networked computing devices accessible via a network to a plurality of user computing devices, the networked computing system being configured to:

receive, from a first seller, a first offer to sell a quantity of a retail good at a price, the first offer to sell including a retail good identifier and a location and a time at which distribution of the retail good is to take place;

form a pool corresponding to the retail good identifier, the location and the time by grouping the first offer to sell with one or more other offers to sell having the same retail good identifier and the same location and time terms;

receive, from a first buyer, a first offer to buy a quantity of a retail good at a price, the first offer to buy including a retail good identifier and a location and a time at which distribution of the retail good is to take place;

determine that the retail good identifier, the location and the time of the first offer to buy matches the retail good identifier, the location and the time of the pool, and that the price of the offer to buy is greater than or equal to the price of one or more offers to sell of the pool, wherein the one or more offers to sell includes the offer to sell from the first seller;

generate, in response to the determination, a record of a futures contract for the first buyer permitting the first buyer to receive, at the location and time specified in the first offer to sell, a quantity of the retail good;

store the records of the futures contracts for the first seller and the first buyer in a database accessible on the networked computing system;

a plurality of distribution points, each distribution point including one or more distribution computing devices, wherein at least one distribution computing device is configured to:

receive a request for distribution of a quantity of the retail good pursuant to the record of the futures contract for the first buyer;

> determine whether to distribute the requested quantity in whole or in part pursuant to the record of the futures contract for the first buyer by accessing the networked computing system;
>
> distribute none, some, or all of the requested quantity, as determined; and
>
> in response to successful distribution of the quantity, update the record of the futures contract for the first buyer to reflect the quantity delivered by accessing the networked computing system.

## REJECTIONS AT ISSUE

Claims 26–43 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 2–3.

Claims 26–29, 31–35, 37–41, and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Senior. Final Act. 6–10.

Claims 30, 36, and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Senior and Strickland. Final Act. 10–11.

## ANALYSIS

### *1. Rejection Under 35 U.S.C. § 101*

The Examiner concludes the present claims are directed to a fundamental economic practice. Final Act. 2–3. Moreover, the Examiner finds the present claims do not amount to significantly more than an abstract idea because they implement the abstract idea on generic components that are well-understood, routine, and conventional activities previously known to the pertinent industry. *Id.* at 3.

The Examiner concludes the present claims are not significantly more than any abstract idea because they do not contain an inventive concept

sufficient to transform the claim into patent-eligible subject matter. *Id.* at 15. In addition, the Examiner finds the present claims are directed to implementing the abstract idea using conventional or generic technology. Final Act. 6.

Appellant argues the Examiner provides conclusory assertions in reaching the conclusion that the claims are directed to an abstract idea. Br. 6. Appellant argues the present claims do not preempt others from using the abstract idea. *Id.* at 6–7.

Appellant argues the present claims are significantly more than any abstract idea because they recite a specific ordered combination of elements. *Id.* at 8–10. And Appellant argues the claims are similar to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.* (773 F.3d 1245 (Fed. Cir. 2014)), because they are necessarily rooted in computer technology to overcome a problem specifically arising in the realm of computer technology (e.g., relating to the data structures needed to match various inputs having disparate terms and relating to interactions between a centralized network computing system with distribution points and user devices to allow for fulfillment and distribution tracking). Br. 10. We disagree with Appellant.

*A. Legal Principles*

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. The Supreme Court has long held that this provision contains an implicit exception: "'[l]aws of nature, natural phenomena, and abstract ideas are not patentable.'" *Alice Corp. Pty. v. CLS*

*Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589–90 (2013)). The Court has set forth a two-part inquiry to determine whether this exception applies.

First, we must "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Alice*, 134 S. Ct. at 2355. Second, if the claims are directed to one of those patent-ineligible concepts, 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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–78 (2012)). Put differently, we must search the claims for an "inventive concept," that is, "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 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

*B. Based Upon a Preponderance of the Evidence, and our Review of the Record, we Disagree with Appellants' Arguments*

*i. Alice Step 1*

On this record, we discern no error in the Examiner's analysis and conclusion that the present claims are directed to an abstract idea of a fundamental economic practice. Final Act. 2–3. Moreover, we conclude the present claims are similar to the fundamental economic practice abstract idea in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014), which is creating a contractual relationship.

We, therefore, disagree with Appellant's argument that the Examiner provides conclusory assertions in reaching the conclusion that the claims are directed to an abstract idea (Br. 6). Further, we are not persuaded by Appellant's argument that the claims do not preempt all applications of any abstract idea. *Id.* at 6–7. Although preemption may signal patent-ineligible subject matter, the absence of preemption does not demonstrate patent eligibility. *See FairWarning, IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016). For claims covering a patent-ineligible concept, preemption concerns "are fully addressed and made moot" by an analysis under the *Mayo/Alice* framework. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Because the present claims are directed to an abstract idea, we proceed to step (2) of the *Alice*, two-part test.

*ii. Alice Step 2*

On this record, we see no error in the Examiner's analysis and finding that the present claims are not significantly more than any abstract idea because they implement the abstract idea on generic components that are well-understood, routine, and conventional activities previously known to the pertinent industry. Final Act. 3. In particular, paragraph 33 of the Specification states:

> [a]though the terms "web server," "application server," and "database" are used herein in describing the illustrative **exemplary** system, **it will be appreciated that the function of such computing devices may be served by other types of computing devices in alternative implementations. For example, general purpose** networked computing devices may

> be configured to act as a web server, application server, or database with appropriate programming or software.

Spec. ¶ 33 (emphases added).

We also see no error in the Examiner's finding that the present claims are directed to implementing the abstract idea using conventional or generic technology. Final Act. 6. In particular, paragraphs 58 and 63 of Appellant's Specification discuss using generic components. Spec. ¶¶ 58, 63.

We, therefore, disagree with Appellant's argument the present claims are significantly more than any abstract idea because they recite a specific ordered combination of elements (Br. 8–10). In addition, we disagree with Appellant's argument that, like *DDR*, the present are necessarily rooted in computer technology to overcome a problem specifically arising in the realm of computer technology (*id.* at 10), because the present claims are directed to an abstract idea that use generic components to implement that abstract idea for the reasons stated *supra*, rather than solving any problem arising in computer technology. That is, the present claims merely use computer technology, but do not solve any problem arising from computer technology.

Accordingly, we sustain the Examiner's rejection of claims 26–43 under 35 U.S.C. § 101.

*2. Rejection Under 35 U.S.C. § 103*

The Examiner finds Senior teaches maintaining a computer database system of the commodity of users purchasing gasoline commodity, the identification of the commodity transacted including the unit price for each product for sale; the users can redeem their pre-purchased quantities of commodity at retail locations or other physical locations in the future, which the Examiner maps to the limitation "form a pool corresponding to the retail good identifier, the location and the time by grouping the first offer to sell

with one or more other offers to sell having the same retail good identifier and the same location and time terms" as recited in claim 26 (and similarly recited in claim 32). Ans. 6–7 (citing Senior ¶¶ 30, 36). And the Examiner finds Senior teaches a futures contract is a firm commitment to make or accept delivery of a specified quantity of a commodity during a specific month in the future, which the Examiner maps to the limitation an "offer to sell including a retail good identifier and a location and a time at which distribution of the retail good is to take place" recited in claims 26 and 32. Ans. 8 (citing Senior ¶ 107). Additionally, the Examiner finds Senior teaches purchasing physical products for later redemption at distribution or redemption locations; each retail location has a point of sale terminal and in-store kiosk, which the Examiner maps to the limitation "a plurality of distribution points, each distribution point including one or more distribution computing devices" recited in claims 26 and 32. Ans. 9 (citing Senior ¶¶ 56, 58, Fig. 2). The Examiner finds Senior does not explicitly use the word "matching," but that Senior's teachings infer "matching" because the buyer is purchasing a commodity at a price the seller is offering, which means the price of the offer to buy is equal to the price of one or more offer to sell. Final Act. 8.

Appellant argue Senior does not teach forming pools between multiple offers to sell based on certain terms of those offers to sell. Br. 11–13. Also, Appellant argues Senior does not teach offers to sell retail goods including a time at which delivery of the retail good is to take place. *Id.* at 13. And Appellant argues Senior does not teach a plurality of distribution points with respect to computing devices that communicate with a networked computing system for enabling the distribution of the retail good.

*Id.* Further, Appellant argues the Examiner's inference fails to provide a *prima facie* case of obviousness. We disagree with Appellant.

The cited portions of Senior relied upon by the Examiner teach maintaining a computer database system of the commodity of users purchasing gasoline commodity, the identification of the commodity transacted including the unit price for each product for sale; the users can redeem their pre-purchased quantities of commodity at retail locations or other physical locations in the future, which teaches the limitation "form a pool corresponding to the retail good identifier, the location and the time by grouping the first offer to sell with one or more other offers to sell having the same retail good identifier and the same location and time terms" as recited in claim 26 (and similarly recited in claim 32). Ans. 6–7 (citing Senior ¶¶ 30, 36).

Furthermore, the cited portions of Senior teach a futures contract is a firm commitment to make or accept delivery of a specified quantity of a commodity during a specific month in the future, which teaches the limitation an "offer to sell including a retail good identifier and a location and a time at which distribution of the retail good is to take place" recited in claims 26 and 32. Ans. 8 (citing Senior ¶ 107).

In addition, the cited portions of Senior teach purchasing physical products for later redemption at distribution or redemption locations; each retail location has a point of sale terminal and in-store kiosk, which teaches the limitation "a plurality of distribution points, each distribution point

including one or more distribution computing devices" recited in claim 26 (and similarly recited in claim 32). Ans. 9 (citing Senior ¶¶ 56, 58, Fig. 2).

We agree with the Examiner's finding that Senior does not explicitly use the word "matching," but that Senior's teachings infer "matching" because the buyer is purchasing a commodity at a price the seller is offering, which means the bid price of a potential buyer is equal to or greater than the offer price of the one or more sellers. Final Act. 8.

Moreover, we note that although the Examiner finds these claims 26 and 32 are unpatentable as obvious, yet appears to present a case of anticipation, we determine that such a presentation is not a basis for reversing the Examiner. It is axiomatic patent law that a disclosure that anticipates under 35 U.S.C. § 102 also may render the claim unpatentable under 35 U.S.C. § 103, because anticipation is the epitome of obviousness. *See In re McDaniel*, 293 F.3d 1379, 1385 (Fed. Cir. 2002) ("It is well settled that 'anticipation is the epitome of obviousness.'") (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)).

Appellant does not argue separately claims 27–43 with particularity, but assert the rejections of those claims should be withdrawn for at least the same reasons as argued in independent claim 26. Br. 15–17. Accordingly, we sustain the Examiner's rejection of: (1) independent claims 26 and 32; and (2) dependent claims 27–31 and 33–43 under 35 U.S.C. § 103.

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments the Appellant could have made, but chose

not to make, in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner's decision rejecting claims 26–43 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 26–43 under 35 U.S.C. § 103.

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