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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DARREN DAVIS, TOM KOCH, JOHN D. MILLER,
ERIC PHILIPS, GUY B. SEREFF, STACY TOBIAS, VASU VEMURI,
ROCHELLE WESSELINK, SCOTT TANGUAY, ROBERT STRUB,
CALEB WILLIAMS, and SHAMUS WEILAND

Appeal 2017-000878
Application 13/922,741
Technology Center 3600

Before ELENI MANTIS MERCADER, CATHERINE SHIANG, and
CARL L. SILVERMAN, *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 22–26 and 28–40, 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 electronic financial transactions. *See generally* Spec. 1. Claim 22 is exemplary:

22. A method of processing payments globally over one of a plurality of payment processing paths for a user, comprising:
receiving, by a global payment utility processor, information consisting at least in part of a payment source account identifier, a payment destination account identifier, and a user-designated payment vehicle;
selecting, by the global payment utility processor, one of a plurality of
payment processing paths for a payment according to a clearing rules aspect of a rules engine of the global payment utility based at least in part on payment processing paths available via the user-designated payment vehicle and at least in part on a comparison of processing costs of each of the payment processing paths available via the user designated payment vehicle; and
routing, by the global payment utility processor, the payment via the selected payment processing path.

Rejection

Claims 22–26 and 28–40 are rejected under 35 U.S.C. § 101 as being 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. 2–5) and (ii) the Answer (Ans. 3–6) to the extent they are consistent with our analysis below.

On this record, the Examiner did not err in rejecting claim 22.

The Examiner rejects the claims under 35 U.S.C. § 101 because they are directed to patent-ineligible subject matter. *See* Final Act. 2–5; Ans. 3–6. In particular, the Examiner concludes the claims are directed to the abstract idea of receiving, manipulating, and transmitting information. *See* Ans. 4. The Examiner further finds the claims use generic computer components to perform generic computer functions. *See* Ans. 4. Appellants argue the Examiner erred. *See* Br. 10–17.

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, “[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).

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 (Br. 10–17), 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 22 is directed to collecting (including receiving or routing) information (“receiving . . . routing . . .”), and analyzing or manipulating information (“selecting . . .”). Claim 40 is a system claim directed to performing similar collecting information and analyzing (or manipulating) information functions. *See Elec. Power*, 830 F.3d at 1353. 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 23–26 and 28–39.

Appellants’ assertion that “the Examiner’s ‘analysis’ amounts to nothing more than a recitation of two words from the preamble of the independent claims followed by stock boilerplate conclusions” (App. Br. 10; *see also* Br. 13) contradicts the record. For example, as discussed above, the Examiner correctly finds the claims are directed to the abstract idea of receiving, manipulating, and transmitting information. *See* Ans. 4.¹ The Examiner also correctly finds the claims use generic computer components to perform generic computer functions. *See* Ans. 4. Those finding are not “recitation of two words from the preamble of the independent claims.” Nor are they “stock boilerplate conclusions.”

Appellants’ assertion regarding pre-emption (App. Br. 14–16) is unpersuasive, because “[w]hile preemption may signal patent ineligible

¹ As a result, the Examiner does not merely find the claims are directed to “payment processing,” as Appellants assert (Br. 13, 16). Appellants also cite PTAB cases, which are not precedential. *See* App. Br. 12–14. In any event, the Examiner’s findings are directed to the specific language of the claims, and are not merely generalized arguments.

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”).

Regarding *Alice* step two, contrary to Appellants’ assertion (Br. 15–17), 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 (Br. 15–17), the claims are similar to the claims of *Electric Power*, because they do not require any nonconventional computer or network 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 22 (reciting “a global payment utility processor . . . a rules engine”); Claim 40 (reciting “a global utility payment processor coupled to memory . . . a rules engine”). The Examiner finds—and Appellants do not persuasively dispute—“payment processing protocols have been commonly used for more than 30 years and the collection of the necessary information to route the payment is common conventional.” Ans. 6. The “global payment utility processor” or “global payment utility processor” is a conventional processor that is utilized

to process payments. Similarly, the “rules engine” is a conventional processor that is associated with rules. 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 23–26 and 28–39.

Appellants’ argument that “the claimed invention provides significant improvement to the function of the global payment utility processor” by “greatly simplifying processing and decreasing processing costs through interfacing with multiple internal processors, while at the same time decreasing processing conventionally performed by disparate external networks” (App. Br. 15–16) is not commensurate with the scope of the claims, as Appellants have not shown the claims require such limitations. In any event, our reviewing court has declared:

While the claimed system and method certainly *purport to accelerate the process of analyzing audit log data, the speed increase comes from the capabilities of a general-purpose computer, rather than the patented method itself. See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.), 687 F.3d 1266, 1278 (Fed. Cir. 2012)* (“[T]he fact that the required calculations could be performed *more efficiently* via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1095 (Fed. Cir. 2016) (emphases added).

Applying this reasoning to the rejected claims, we similarly find any purported efficient techniques come from the capabilities of general-purpose computers (discussed above), rather than the claimed steps or functions. Similar to the claims of *FairWarning*, the rejected claims “are not directed to an improvement in the way computers operate” and “the focus of the claims

is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *FairWarning*, 839 F.3d at 1095.

Further, Appellants’ argument regarding prior art rejection (Br. 15–16) 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).

Finally, Appellants advance many conclusory attorney arguments, which are not supported by evidence. *See, e.g.*, Br. 11–14, 16. Such arguments are unpersuasive of error.

In short, Appellants have not shown the claims, read in light of the Specification, require anything other than conventional computer and network technology for collecting and analyzing 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 22–26 and 28–40 under 35 U.S.C. § 101.

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DECISION

We affirm the Examiner's decision rejecting claims 22–26 and 28–40.

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