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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* BASIM MAJEED, XIAOFENG DU, and BEHZAD BORDBAR

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Appeal 2017-001009  
Application 13/184,015<sup>1</sup>  
Technology Center 3600

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Before JOHNNY A. KUMAR, JAMES W. DEJMEK, and  
MATTHEW J. McNEILL, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–26. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants identify Khalifa University of Science, Technology, and Research; British Telecommunications plc; and Emirates Telecommunications Corporation as the real parties in interest. App. Br. 4.

## STATEMENT OF THE CASE

### *Introduction*

Appellants' invention relates to methods and systems "for distributed and collaborative monitoring." Spec. ¶ 1. In particular, Appellants describe a Service Oriented Architecture (SOA) wherein one or more business processes may use various services. Spec. ¶¶ 2–5. "By monitoring tasks by service and not by the processes which use those services, if there are any problems in a specific service then all processes that use the service will receive the diagnostics (or predictions) without having to deploy a diagnose for each individual process." Spec. ¶ 24. Appellants disclose the monitoring may be on a regular (i.e., periodic) or event-driven basis and may include the monitoring of message traffic between the service and its consumers. Spec. ¶¶ 27–28. Further, according to the Specification, monitoring business processes at the service level allows for collected service monitoring information to be used to prevent a failure or recover from a failure in all relevant business processes. Spec. ¶ 25.

Claims 1 and 7 are exemplary of the subject matter on appeal and are reproduced below with the disputed limitations emphasized in *italics*:

1. A method of monitoring the performance of services within a business process environment, the method including the steps of, for each of a plurality of services within said environment, locally to said service:

*with a computer system automatically monitoring the performance of said service in real time; and*

storing a history of events in the performance of said service.

7. A method of designing a business process which uses one or more services within a business process environment, the method including the steps of, when a service is chosen to be included in said business process:

specifying at least one criterion for the performance of said service;

with a computer system automatically retrieving service status information in real-time about said service, retrieving historical performance information for said service or predicting future performance characteristics of said service;

comparing said service status information, historical performance information or future performance characteristics to said criterion; and

*determining, on the basis of said comparison, whether to include said service in said business process.*

#### *The Examiner's Rejections*

1. Claims 1–26 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Ans. 3–5.<sup>2</sup>

2. Claims 1, 2, 5–7, 9–11, 14, 15, 18–22, and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by D'Alessandro (US 6,556,974 B1; Apr. 29, 2003). Final Act. 2–3.

3. Claims 3, 4, 8, 12, 16, 17, 23, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over D'Alessandro and Grah (US 2008/0247320 A1; Oct. 9, 2008). Final Act. 3–6.

4. Claims 13 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over D'Alessandro, Grah, and Applicants' Admitted Prior Art ("AAPA"). Final Act. 6–7.

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<sup>2</sup> The Examiner entered the rejection of claims 1–26 under 35 U.S.C. § 101 as a New Ground of Rejection in the Answer.

### ANALYSIS<sup>3</sup>

#### *Rejection under 35 U.S.C. § 102(b)*

The Examiner rejects all of the independent claims, *inter alia*, under 35 U.S.C. § 102(b) as being anticipated by D’Alessandro. Final Act. 2–3. More specifically, the Examiner finds D’Alessandro discloses the limitations of claim 1 and rejects the other independent claims (i.e., claims 7, 11, 14, 20, 22, and 24), collectively therewith. Final Act. 2–3.

As an initial matter, we note, as do Appellants, the other independent claims recite additional or different limitations from claim 1. App. Br. 22–23. For instance, other limitations required by the independent claims include: (i) specifying at least one criterion for the performance of said service; (ii) comparing service status information to the specified criterion; (iii) determining whether to include a service in a business process, based on the comparison of performance to a specified criterion; and (iv) determining whether there are any problems or predicted problems with the service based on the information collected.

Regarding the rejection of claim 1, Appellants assert that D’Alessandro does not actually monitor the performance of any services, but rather, surveys people for their opinions about the businesses providing those services. App. Br. 22. “Surveying people about businesses is fundamentally different than actually monitoring services.” App. Br. 22.

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<sup>3</sup> Throughout this Decision, we have considered the Appeal Brief, filed December 12, 2014 (“App. Br.”); the Reply Brief, filed June 8, 2015 (“Reply Br.”); the Examiner’s Answer, mailed April 8, 2015 (“Ans.”); and the Final Office Action, mailed March 13, 2014 (“Final Act.”), from which this Appeal is taken.

In response, the Examiner notes that the claimed limitation “service” is not defined in Appellants’ Specification. The Examiner finds D’Alessandro’s disclosure of services such as health care accreditation services, educational services, and child welfare services are encompassed by Appellants’ claimed “services.” Ans. 7–8 (citing D’Alessandro, col. 4, ll. 5–13). Further, the Examiner explains that by surveying these services, the “service is actually being monitored.” Ans. 8.

When construing claim terminology during prosecution before the Office, claims are to be given their broadest reasonable interpretation consistent with the Specification, reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). We are mindful, however, that limitations are not to be read into the claims from the Specification. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

The Examiner’s construction of a service, however, is not consistent with how one of ordinary skill in the art would understand a service, as described in Appellants’ Specification. Rather, a service is described as part of a Service Oriented Architecture (SOA) wherein particular functionality is partitioned into “coherent reusable services.” Spec. ¶¶ 2–3. Multiple services may be used together as part of an overall business process. Spec. ¶ 9.

We agree with Appellants that surveying people about a business is different from monitoring the performance of a service, as claimed. *See* Br. 22. Because we find it dispositive that D’Alessandro, as relied upon by the Examiner, does not disclose “automatically monitoring the performance

of said service,” as required by independent claim 1, we need not address other issues raised by Appellants’ arguments.

For the reasons discussed *supra*, and constrained by the record before us, we do not sustain the Examiner’s rejection under 35 U.S.C. § 102(b) of independent claims 1, 7, 11, 14, 20, and 22. Additionally, we do not sustain the Examiner’s rejection under 35 U.S.C. § 102(b) of claims 2, 5, 6, 9, 10, 15, 18, 19, 21, and 24, which depend directly or indirectly therefrom.

*Rejections under 35 U.S.C. § 103(a)*

Dependent claims 3, 4, 8, 12, 13, 16, 17, 23, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over, *inter alia*, the combined teachings and suggestions of D’Alessandro and Grah. Final Act. 3–7.

Grah is generally directed to “[n]etwork service operational status monitoring.” *See* Grah, Abstract, Title. Grah describes an active and a passive monitoring scheme wherein the operational status of a network service may be determined. *See* Grah ¶¶ 13–17; *see also* Grah ¶ 88, Fig. 2. Grah describes an operational status “determines the operational status of a network service by monitoring communication traffic associated with usage of the network service by network service users.” Grah ¶ 104 (“the operational status monitor 56 might passively listen to service-related communication traffic without interrupting the flow of such traffic”).

The Examiner, however, does not rely on Grah to cure the deficiencies related to the rejection of the independent claims.<sup>4</sup> Thus,

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<sup>4</sup> In the event of further prosecution, we leave it to the Examiner to determine whether Grah, either alone or in combination with other prior art references, discloses or suggests the claimed “service” limitation recited in

constrained by the record before us, we do not sustain the Examiner's rejections of dependent claims 3, 4, 8, 12, 13, 16, 17, 23, 25, and 26.

*Rejection under 35 U.S.C. § 101*

Appellants dispute the Examiner's conclusion that the pending claims are directed to patent-ineligible subject matter under 35 U.S.C. § 101. Reply Br. 2–5. In particular, Appellants argue the claims are not directed to (or otherwise limited to) monitoring the performance of services within a business process environment. Reply Br. 3.

The Supreme Court's two-step framework guides our analysis. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). *Alice*, 134 S. Ct. at 2355. If so, the second step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception. *Alice*, 134 S. Ct. at 2355.

Although the independent claims each broadly fall within the statutory categories of patentability, the Examiner concludes the claims are directed to a judicially recognized exception—i.e., an abstract idea. Ans. 3–5. In particular, the Examiner concludes claims 1–13 (i.e., the method claims) are

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the independent claims. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* Manual of Patent Examining Procedure (MPEP) § 1213.02 (9th ed. Rev. 08.2017, Jan. 2018).



directed to the abstract idea of a “method of monitoring the performance of services within a business process environment.”<sup>5</sup> Ans. 3–4.

Instead of using a definition of an abstract idea, “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.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)); accord United States Patent and Trademark Office, *July 2015 Update: Subject Matter Eligibility 3* (July 30, 2015), <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf> (instructing Examiners that “a claimed concept is not identified as an abstract idea unless it is similar to at least one concept that the courts have identified as an abstract idea.”). As part of this inquiry, we must “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., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Our reviewing court has concluded that abstract ideas include the concepts of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); see also *Smart Sys. Innovations, LLC v. Chicago Transit Authority*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (concluding “claims directed to the collection, storage, and recognition of data are directed to an abstract idea”).

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<sup>5</sup> The Examiner makes a similar conclusion for claims 14–26 (i.e., the system claims). See Ans. 5.

Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power*, 830 F.3d at 1353. Similarly, “collecting, displaying, and manipulating data” is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017). Also, more recently, our reviewing court has also concluded that acts of parsing, comparing, storing, and editing data are abstract ideas. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1366 (Fed. Cir. 2018).

Further, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

Here, Appellant’s claims generally relate to monitoring information (such as by retrieving or collecting information) related to the performance of a service in a business process environment. *See, e.g.*, claims 1, 7, 11, 14, 20, and 22. The information is analyzed to determine the occurrence of past or predicted events, wherein the information or portions thereof may be stored. Further, based on the determined occurrence of past or predicted events, a determination may be made whether to include the service in a business process.

In the Specification, Appellants describe the monitoring of a service to include monitoring messages between the service and its consumers. Spec. ¶ 28. Additionally, the retrieving (or collecting) of service status

information “makes use of a method of monitoring” the service. Spec. ¶ 43. Thus, the claimed limitations of monitoring, retrieving, or collecting service performance information are similar to the abstract ideas of collecting, analyzing, and manipulating data. *See, e.g., Content Extraction*, 776 F.3d at 1347; *Elec. Power*, 830 F.3d at 1353. Additionally, limitations comparing the collected data to a threshold and determining a status based on the comparison (e.g., is the service’s performance acceptable such that it should be included in a particular business process?) are similar to the abstract ideas of recognizing certain data within the collected data, analyzing the data, and comparing the data. *See, e.g., Content Extraction*, 776 F.3d at 1347; *Elec. Power*, 830 F.3d at 1353; *Berkheimer*, 881 F.3d at 1366; see also *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) (identifying various functional steps in a claimed method, but noting the “does not sufficiently describe how to achieve these results in a non-abstract way” (citing *Affinity Labs*, 838 F.3d at 1258–59)). Similarly, storing the collected data is also an abstract idea. *See Content Extraction*, 776 F.3d at 1347. Accordingly, we agree with the Examiner that the claims are directed to an abstract idea.

Because we determine the claims are directed to an abstract idea, we analyze the claims under step two of *Alice* to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294, 1297–98 (2012)). The implementation of the abstract idea involved must be “more than [the] performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’”

*Content Extraction*, 776 F.3d at 1347–48 (quoting *Alice*, 134 S. Ct. at 2359) (alteration in original).

Here, we agree with the Examiner that the additional limitations, separately, or as an ordered combination, do not provide meaningful limitations (i.e., do not add significantly more) to transform the abstract idea into a patent eligible application. Ans. 4. Appellants do not provide persuasive evidence or argument to support the assertion that “the claims include ‘transformative’ elements and are directed to a ‘particular machine.’” Reply Br. 4. 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). Appellants’ Specification describes the computer system not as a particular machine but as a generic computer to perform generic computer functions. *See* Spec. ¶ 147; *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”).

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of independent claims 1, 7, 11, 14, 20, and 22 under 35 U.S.C. § 101. Additionally, we sustain the Examiner’s rejection of claims 2–6, 8–10, 12, 13, 15–19, 21, and 23–26, which depend directly or indirectly therefrom and were not argued separately. *See* Reply Br. 2–5; 37 C.F.R. § 41.37(c)(1)(iv)(2013).

DECISION

We reverse the Examiner's decision rejecting claims 1, 2, 5–7, 9–11, 14, 15, 18–22, and 24 under 35 U.S.C. § 102(b).

We reverse the Examiner's decision rejecting claims 3, 4, 8, 12, 13, 16, 17, 23, 25, and 26 under 35 U.S.C. § 103(a).

We affirm the Examiner's decision rejecting claims 1–26 under 35 U.S.C. § 101.

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