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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte J. NIRDOSH REDDY and ARVIND J. REDDY

Appeal 2017-001071
Application 13/683,805¹
Technology Center 3600

Before THU A. DANG, JOYCE CRAIG, and MATTHEW J. McNEILL,
Administrative Patent Judges.

CRAIG, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–19 and 22–31, which are all of the claims pending in this application.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is J. Nirdosh Reddy. App. Br. 3.

² Claims 20 and 21 have been canceled. Final Act. 2.

INVENTION

Appellants' application relates to a process review system. Abstract.

Claim 1 is illustrative and reads as follows:

1. A computer system for managing processes in an organization where the system comprises:

a computer with a memory having instructions that:

determine a process flow for an organization with a global process flowchart having a set of processes, where a first process from the set of processes has a macro flowchart that has a sub-process, and the sub-process has a micro flowchart, and where the set of processes includes a set of primary processes and at least one enabling process, where the set of primary processes process the organization's orders, and the enabling process enables at least one primary process, and where a second process in the set of processes has an associated process leader who is responsible for the second process, where the first process and the second process can be the same process;

associates individual process summaries to individual processes from the set of processes, where each process summary has at least one related process selected from a list of a customer process, a supplier process and an interfacing process;

associates the related process with a parameter to measure, where the parameter to measure is an aspect of the individual process, and where the parameter has expectations for the measured values;

finds discrepancies between expectations for parameters that measure the same feature where one parameter is measuring the feature as output from an upstream process and the other parameter is measuring the feature as input to a downstream process, where the upstream process and the downstream process are members of the set of processes;

receives actual measurement information about the parameter from the processes in the organization, including

automatically receiving actual measurement information from other systems; and

generates an exception report including a row for each exception and a plurality of columns, where an exception is any process from the global process flowchart set of processes having a measurement parameter whose actual measurement does not meet expectations or whose actual measurement information is missing, and the columns include identification of which process is an exception, a target value and a range for the expectations of the measurement parameter, actual measurement minimum and maximum values, percent of actual measurement outside of range, and a reason why the exception is included in the exception report.

REJECTION

Claims 1–19 and 22–31 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception without significantly more. Final Act. 2–6.

ANALYSIS

We have reviewed the rejections of claims 1–19 and 22–31 in light of Appellants’ arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments Appellants could have made, but chose not to make, in the Briefs are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants’ arguments are not persuasive of error. We agree with and adopt as our own the Examiner’s findings of facts and conclusions as set forth in the Answer (Ans. 2–4) and in the Action from which this appeal was taken (Final Act. 2–6). We provide the following explanation for emphasis.

In concluding the rejected claims are directed to patent ineligible subject matter under 35 U.S.C. § 101, the Examiner found independent

claim 1 is directed to an abstract idea of data collection and data analysis, which is similar to “comparing information regarding a sample or test subject to a control or target data, diagnosing an abnormal condition by performing clinical tests and thinking about the results, obtaining and comparing intangible data, comparing new and stored information and using rules to identify options.” Ans. 3; *see also* Final Act. 2. The Examiner further found the additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claim amounts to significantly more than the abstract idea itself. Final Act. 4; Ans. 3–4.

Appellants contend the Examiner erred because the claimed invention:

- (1) includes both a particularly programmed computer and other systems which provide input to the computer, thereby defining a concrete invention, not an abstract idea.
- (2) is not simply a computer implementation of a well-known or longstanding process, and does not attempt to “tie up” the entire subject matter area of business process management.
- (3) includes detailed limitations, not taught by the prior art, which add significantly more and amount to an inventive concept.

App. Br. 16–17.

Appellants’ arguments are not persuasive. The Examiner has provided a comprehensive response to Appellants’ arguments that is supported by a preponderance of evidence. Ans. 2–4.

The Supreme Court in *Alice* identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134

S. Ct. 2347, 2355 (2014). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297). In other words, the second step is to “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.* (alteration in original) (quoting *Mayo*, 132 S. Ct. at 1294).

Turning to the first step of the *Alice* inquiry, we agree with the Examiner that Appellants’ method claim 1 is directed generally to data collection and data analysis, specifically a process review system that is a mental process and can be performed in the human mind, or by a human using a pen and paper. *See* Ans. 2–3; Final Act. 2. A method that can be performed in the human mind or by a human using a pen and paper is directed to an abstract idea. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *see also Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (“While the Supreme Court has altered the § 101 analysis since *CyberSource* in cases like *Mayo* and *Alice*, we continue to ‘treat[] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.’”)

(quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016)).

On this record, we conclude claim 1 is directed to an abstract idea, and Appellants have not adequately shown the claim is not directed to an abstract idea. Appellants' argument that the claims are "concrete" and thus not "abstract" is not persuasive. *See* App. Br. 14. Appellants overlook that the first step in the *Alice* framework looks to whether the claim is directed to an abstract idea, not whether the claim as a whole is simply an abstract idea. Moreover, we are unpersuaded by Appellants' argument that claim 1 does not preempt every application of some abstract idea and are, therefore, patentable. *See id.* at 15. Lack of preemption does not make the claims any less abstract. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (collecting cases); *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013); *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.").

Turning to *Alice* step two, we conclude that the elements of claim 1, both individually and as an ordered combination, do not transform the nature of the claims into a patent-eligible application. The recited elements simply elaborate on the abstract idea.

Although independent claim 1 recites a "computer with a memory having instructions" and "other systems," we conclude these claims limitations merely link an abstract idea to a technological environment. As set forth in *Alice*, the introduction of a "computer" into the claims to implement an abstract idea is not a patentable application of the abstract

idea. *Alice*, 134 S. Ct. at 2357–58. As in *Alice*, the computer implementation here is purely conventional and performs basic functions. *See id.* at 2359–60; *see also* Spec. Fig. 1 (computer 22), ¶¶ 26, 27. That is, claim 1 does not effect an improvement to another technology or technical field, and does not amount to an improvement to the functioning of a computer itself. *Alice*, 134 S. Ct. at 2359–60; *see also* Spec. Fig. 1 (computer 22), ¶¶ 26, 27. Instead, we find a person would be capable of performing the claimed steps or functions as mental steps, even though the steps could be performed by a computer. *See CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*”).

We are not persuaded by Appellants’ conclusory argument that the claimed invention “recites specific limitations which add significantly more than mere computer implementation of business process management.” App. Br. 15 (emphasis omitted). Nowhere do Appellants identify what elements in claim 1 add “significantly more.” In the Reply Brief, Appellants argue “the ‘significantly more’ is the fact that the method claims include detailed steps which are novel and unobvious over (an improvement over) the prior art.” Reply Br. 3 (emphasis omitted). Appellants misapprehend the controlling precedent. 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 (alteration in original)

(quoting *Mayo*, 132 S. Ct. at 1294). A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Accordingly, we sustain the Examiner’s § 101 rejection of independent claim 1, as well as the Examiner’s § 101 rejection of independent claims 27 and 28,³ which Appellants argue are patentable for similar reasons. App. Br. 12. We also sustain the Examiner’s rejection of dependent claims 2–19, 22–26, and 29–31, not argued separately. *Id.* at 17.

DECISION

We affirm the Examiner’s decision rejecting claims 1–19 and 22–31.

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

³ In the event of further prosecution, we leave it to the Examiner to consider whether claim 28, and claims 29 and 30 dependent thereon, should be rejected under 35 U.S.C. § 101 because the scope of the recited “machine readable medium” encompasses transitory media such as signals or carrier waves. *See Ex parte Mewherter*, 107 USPQ2d 1857 (PTAB 2013) (precedential) (holding recited machine-readable storage medium ineligible under § 101 since it encompasses transitory media).