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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TOD A. NESTOR, ROBERT PATRICK,
and BENITO CIANCIARUSO

Appeal 2017-001224¹
Application 14/491,054²
Technology Center 3600

Before NINA L. MEDLOCK, KENNETH G. SCHOPFER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims 1–19. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on September 27, 2018.

¹ Our decision references the Appeal Brief (“Appeal Br.,” filed Dec. 28, 2015), the Amended Appeal Brief (“Am. Appeal Br.,” filed Apr. 20, 2016), the Reply Brief (“Reply Br.,” filed Oct. 25, 2016), the Examiner’s Answer (“Ans.,” mailed Aug. 25, 2016), and the Final Office Action (“Final Act.,” mailed June 8, 2015). The record includes a transcript of the oral hearing held Sept. 27, 2018.

² According to Appellants, the real party in interest is Global e-Ticket Exchange Ltd. Appeal Br. 2.

We REVERSE.

BACKGROUND

According to Appellants:

The present invention is generally directed to the sale and use of tickets for entertainment events, such as sporting events, performances, concerts, and the like, and more particularly to an electronic ticket exchange system which maximizes the revenue that artists, promoters and/or entertainment venue owners can receive from events, while at the same time facilitating the ability of patrons to obtain and trade electronic tickets as desired, as well as to gain entry to entertainment events.

Spec. 1.

CLAIMS

Claims 1 and 14 are the independent claims on appeal. Claim 1 is illustrative of the appealed claims and recites:

1. A system for selling and exchanging electronic tickets for entertainment events, comprising:

a patron interface via which patrons purchase electronic tickets for an entertainment event at a venue from a vendor;

a storage system which stores information regarding electronic tickets purchased by patrons;

a seating system which determines an assignment of seats at said venue for respective electronic tickets purchased for the entertainment event, and dynamically re-allocates the seat assignments as additional tickets are obtained by patrons prior to the entertainment event; and

an entry system having at least one access control device with a reader at the venue of an event, which:

(i) communicates with said seating system prior to the beginning of the entertainment event, to receive information regarding the seats that have been assigned to purchased tickets,

(ii) is responsive to presentation of identifying information pertaining to an entering patron at said reader to communicate with said storage system and determine whether the identified patron is an owner of an electronic ticket for the entertainment event,

(iii) in response to said determination, automatically provides the entering patron who is determined to be associated with an electronic ticket with physical access to the venue at which the entertainment event is being presented, and

(iv) provides the entering patron with an indication of the seat that has been assigned to the electronic ticket associated with the entering patron, at the time that entry is provided by said access control device.

Am. Appeal Br., Claims App. 1.

REJECTION

The Examiner rejects claims 1–19 under 35 U.S.C. § 101 as claiming ineligible subject matter.

DISCUSSION

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: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 134 S. Ct.

at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “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*, 566 U.S. at 79, 78).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Alice Step One

Here, the Examiner initially determines that the claims “are directed to improving the usability of electronic tickets which is a fundamental economic practice and thus an abstract idea.” Final Act. 4. The Examiner also determines that the claims are related to a fundamental business practice because they are related to a “known profitable business practice,” i.e., “[i]ncreasing the usability of electronic tickets.” *Id.* at 2. Although increasing usability of electronic tickets may be generally related to increasing business profits, without further explanation from the Examiner, we cannot agree with the Examiner’s indication that any concept related to a

known profitable business practice is a fundamental business practices under the *Alice* analysis. Thus, we agree with Appellants that the Examiner’s identification of the abstract idea as a fundamental business practice does not accurately characterize the subject matter of the claims. *See* Appeal Br. 5.

Further, in the Answer, the Examiner finds that the claims are directed to “systems for selling and exchanging tickets” which are similar to concepts identified as fundamental economic practices. Ans. 2–3. However, we agree with Appellants that the Examiner’s analysis in the Answer is also lacking because it avoids any meaningful analysis of the claim limitations and only focuses on the claims’ preamble, e.g. claim 1 recites “[a] system for selling and exchanging electronic tickets.” Am. Appeal Br., Claims App. 1. We agree with Appellants that the claims include limitations directed to specific features that are not addressed in the Examiner’s reduction of the abstract idea to the intended use identified in the preamble of claim 1, including, for example, the recitation of a seating system to determine seat assignments and an entry system that provides physical access to a venue. Reducing the claims to the concept identified in the preamble and without addressing the limitations of the claims threatens to “describ[e] the claims at such a high level of abstraction and untethered from the language of the claims [such that it] all but ensures that the exceptions to § 101 swallow the rule.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Here, we find that determining that a claim is directed only to that which is stated in the preamble is tantamount to reducing the *Alice* step-one inquiry to “simply ask[ing] whether the claims involve a patent-ineligible concept.” *Id.* at 1335.

Accordingly, we are persuaded that the Examiner erred in determining that the claims are directed to an abstract idea.

Alice Step Two

Because the Examiner has not adequately demonstrated that the claims are directed to an abstract idea, under the first step of the *Alice* framework, we do not proceed to the second step. *See Enfish*, 822 F.3d at 1339 (citing *Alice*, 134 S. Ct. at 2355).

Based on the foregoing, we are persuaded of error in the rejection of claims 1–19, and thus, we do not sustain the rejection of those claims.

CONCLUSION

We REVERSE the rejection of claims 1–19.

REVERSED