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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LUCAS J. MYSLINSKI<sup>1</sup>

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Appeal 2017-001329  
Application 13/763,837  
Technology Center 3600

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Before CARLA M. KRIVAK, JON M. JURGOVAN, and  
NABEEL U. KHAN, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> The real party in interest is identified as LinkedIn Corporation of Mountain View, CA.

## STATEMENT OF THE CASE

Appellant's invention is directed to "the field of automatically verifying the factual correctness of a statement" (Spec. 1:19–21). Particularly, the invention teaches a "fact checking system verifies the correctness of information and/or characterizes the information by comparing the information with one or more sources. The fact checking system automatically monitors, processes, fact checks information and indicates a status of the information" (Spec. 2:2–5).

Independent claim 1, reproduced below, is exemplary of the subject matter on appeal.

1. A method programmed in a non-transitory memory of a first system, the method comprising:
  - classifying a first source in a classification of a plurality of possible classifications;
  - converting at least a first portion of information of the first source to a particular first portion, wherein converting comprises converting voice data to text, screen text to usable text, or graphics to a usable form of data;
  - performing a comparison between the particular first portion and information from one or more second sources;
  - computing a reliability rating of the first source based on the classification of the first source and the comparison of the particular first portion with the one or more second sources, wherein the reliability rating is used for fact checking target information;
  - receiving, from a second device that is not included in the first system, the target information;
  - based on the reliability rating of the first source, performing a fact check of the target information received from the second device.

## REJECTION

The Examiner rejected claims 1–20 under 35 U.S.C. § 101 as directed to non-statutory subject matter (Final Act. 3; Ans. 3)

## ANALYSIS

Appellant contends the Examiner errs in finding claims are directed to an abstract idea and do not include additional elements that add significantly more (App. Br. 2–19). Particularly, Appellant contends the Examiner has not provided analysis for the “four burdens” in the USPTO’s Updated Guidelines issued on July 2015 (App. Br. 4–10). Appellant also contends the additional elements recited in the claims are not generic and amount to significantly more (App. Br. 11–17). Appellant further asserts because the Examiner has stated the claims are not obvious under a 103 rejection the 101 non-statutory subject matter rejection is erroneous (App. Br. 17–18). Appellant believes that by virtue of their claims “qualify[ing] for the streamlined analysis” “is evidence that the 101 rejection under the full analysis is erroneous” and the Guidelines “make it clear that qualifying for the streamlined analysis is all this needed to establish patent eligibility” (App. Br. 19–20). We do not agree with Appellant’s contentions and assertions.

The Examiner identifies Appellant’s invention as “the abstract idea of performing a fact check of information on a computer” and is “nothing more than requiring a generic computer system (e.g. a processor, memory) to merely carry out the abstract idea” (Final Act. 2).

Patent eligibility is a question of law that is reviewable *de novo*.  
*Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012).

Patentable subject matter is defined by 35 U.S.C. § 101, as follows:

[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.

In interpreting this statute, the Supreme Court emphasizes that patent protection should not preempt “the basic tools of scientific and technological work.” *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). The rationale is that patents directed to basic building blocks of technology would not “promote the progress of science” under the U.S. Constitution, Article I, Section 8, Clause 8, but instead would impede it. Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017) (citing *Alice*, 134 S. Ct. at 2354).

The Supreme Court set forth a two-part test for subject matter eligibility in *Alice*. 134 S. Ct. at 2355. The first step is to determine whether the claim is directed to a patent-ineligible concept. *Id.* (citing *Mayo*, 566 U.S. at 76–77). If so, then the eligibility analysis proceeds to the second step of the *Alice/Mayo* test in which we “examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). The “inventive concept” may be embodied in one or more of the individual claim

limitations or in the ordered combination of the limitations. *Alice*, 134 S. Ct. at 2355. The “inventive concept” must be significantly more than the abstract idea itself, and cannot be simply an instruction to implement or apply the abstract idea on a computer. *Alice*, 134 S. Ct. at 2358. “[W]ell-understood, routine, [and] conventional activit[ies]’ previously known to the industry” are insufficient to transform an abstract idea into patent-eligible subject matter. *Alice*, 134 S. Ct. at 2359 (citing *Mayo*, 566 U.S. at 73).

Initially we note Appellant does not address the *Alice/Mayo* test, but rather argues the USPTO Updated Guidelines “with the understanding that the arguments are ultimately based on the case law upon which those Updated Guidelines have been construed” (App. Br. 4–5).

Appellant contends the Examiner has not identified “performing a fact check of information” as a concept the courts have identified as an “abstract idea” without any evidence (App. Br. 5–6). Appellant is incorrect in their interpretation of the Guidelines *requiring* only those cases listed to cover all abstract ideas. The Guidelines state “The following *examples* should be used in conjunction with the 2014 Interim Eligibility Guidance. As the *examples* are intended to be *illustrative only*, they should be interpreted based on the fact patterns set forth below. Other fact patterns may have different eligibility outcomes” (emphasis added). Thus, the Guidelines merely provide guidance and set forth *examples* of what could be patent ineligible. In the present case, performing a fact check can be done in the human mind using pen and paper. As the Federal Circuit has concluded, “a process defined simply as using a computer to perform a series of mental steps that people, aware of each step, can and regularly do perform in their heads” is considered an abstract idea. *SmartGene, Inc. v. Advanced*

*Biological Laboratories, SA*, 555 F. App'x 950, 954 (Fed. Cir. 2014) (unpublished) (citing *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“Such a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101”)).

Therefore, we agree with the Examiner that the claims are directed to fact checking information on a computer, which is an abstract idea (*Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016) (“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”) (quotation omitted); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (“Merely requiring the selection and manipulation of information—to provide a ‘humanly comprehensible’ amount of information useful for users—by itself does not transform the otherwise-abstract processes of information collection and analysis.”) (Citation omitted); *see also, OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible”)).

As to the additional elements, we also agree with the Examiner finding the claims do not recite anything more than a generic computer performing generic steps of converting information to usable data, comparing the information to other information, and determining a rating, a reliability rating in this instance, based on the comparison (Ans. 3–4). Appellant merely states these additional steps provide significantly more without stating what the significantly more is (App. Br. 7–9). Appellant also

contends the Examiner has not identified the additional elements (App. Br. 9); however, the Examiner has stated they are the steps other than performing fact checking information (Final Act. 2; Ans. 4–5).

As to Appellants’ arguments that significantly more does not mean claimed actions are beyond the capabilities of existing hardware; rather, the claimed limitations, using off the shelf hardware, perform actions under program control that are inventive, we agree (App. Br. 14–15) (*see Diamond v. Diehr* 450 U.S. 175, (1981) and *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). However, Appellant has not shown how their claim limitations perform inventive actions/functions on a non-generic computer or how the claim limitations are unconventional (App. Br. 15–17).

We also do not agree with Appellant’s argument that an abstract idea transforms into an inventive concept just because the Examiner has not cited prior art that discloses or suggests it (App. Br. 17–18). Indeed, “[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* at 188–89; *see also Mayo* at 90). Therefore, even as to claims that the Examiner concludes are allowable over the art of record, such novelty would not persuade us that the claims are patent eligible under § 101.

Lastly, Appellant appears to believe their claims qualify for a “streamlined analysis” (App. Br. 18–19). Appellant states, to qualify, the claims must not currently be practiced by others and cannot continue to be practiced by others even if Appellant’s claims were issued (App. Br. 19). Appellant then asserts because the Examiner has stated fact checking

information is practiced by others and could continue to be practiced by others even if the claims are issued, “it logically flows that the present claims do not tie up ‘performing a fact check of information’ to the degree others could not practice it” (*id.*). Appellant recites the Guidelines: “the result of employing the streamlined analysis **is a conclusion that the claim is eligible**” (App. Br. 20). Appellant then concludes “it is directly contrary to the updated Guidelines to conclude, based on a full analysis, that an invention that qualifies for the streamlined analysis is patent ineligible” (*id.*). We do not agree. Appellant’s argument is not persuasive because although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). We are instructed that “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the [*Alice/Mayo*] framework . . . , preemption concerns are fully addressed and made moot” (*id.*). Thus, contrary to Appellant’s inference that because fact checking information is currently practiced by others and could continue to be practiced by others even if the claims are issued, does not mean the claims “tie up” this limitation (App. Br. 19); the Examiner merely refers to the abstract idea being performed by a routine, conventional, generic computer and technological environment (*see* Final Act. 2–3).

Appellant provides further attorney argument in their Reply Brief, which we do not consider as it could have been presented in the Appeal Brief. Specifically, Appellant has not made a showing of good cause why the argument should be considered at this time when the Examiner has not had an opportunity to consider and respond to it (37 C.F.R. § 41.41(b)(2)).

Even if we were to consider these arguments, Appellant’s statements that the invention is not directed to a business method patent and the additional steps do not refer to/involve generic computer components, are unpersuasive (Reply Br. 3–4). Appellant’s Specification states a generic computer performs these steps/claim limitations (*see* Spec. 22:23–24 “The memory 404 is able to be any *conventional computer* memory known in the art,” (emphasis added)). Further, Appellant’s list of what is “significantly more” is merely a list (Reply Br. 4–5). Appellant has not stated anywhere in their briefs or explained what steps in their claimed invention are not routine and conventional or are meaningful beyond generally linking the use to a particular technology (Reply Br. 5).

In light of the fact that Appellant has mostly recited what the Guidelines state and has not shown how their claims are statutory in response to the Examiner’s findings and determinations of patent ineligibility under § 101. “The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant” (37 C.F.R. § 41.37(c)(1)(iv)). As Appellant has not explained why, we sustain the Examiner’s rejection of claims 1–20, argued together (App. Br. 4).

#### DECISION

The Examiner’s decision rejecting claims 1–20 as being patent ineligible is affirmed.

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