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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ETHAN L. PERRY and ANDREW L. SCHIRMER

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Appeal 2017–001904  
Application 13/744,119  
Technology Center 3600

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Before ANTON W. FETTING, KENNETH G. SCHOPFER, and  
AMEE A. SHAH, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE<sup>1</sup>

Ethan L. Perry and Andrew L. Schirmer (Appellants) seek review under 35 U.S.C. § 134(a) of a final rejection of claims 8–21, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

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<sup>1</sup> Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed April 1, 2016) and Reply Brief (“Reply Br.,” filed November 18, 2016), and the Examiner’s Answer (“Ans.,” mailed September 30, 2016), and Final Action (“Final Act.,” mailed December 16, 2015).

The Appellants invented a way of dynamically ordering tasks in a task list based on the indications of importance to the user. Specification para. 1.

An understanding of the invention can be derived from a reading of exemplary claim 8, which is reproduced below (bracketed matter and some paragraphing added).

8. A computer program product embodied in a non-transitory computer readable storage medium

for dynamically ordering tasks in a task list,

the computer program product comprising the programming instructions for:

[1] receiving a plurality of tasks;

[2] identifying indicators of importance associated with each of said plurality of tasks,

wherein said indicators of importance are aspects of a task used to assess an importance measure to said task;

[3] generating a score for each identified indicator of importance

associated with each of said plurality of tasks;

and

[4] generating a composite score for each of said plurality of tasks

based on said scores for said identified indicators of importance associated with each of said plurality of tasks, respectively.

The Examiner relies upon the following prior art:

Nelken	US 6,408,277 B1	June 18, 2002
Gunning	US 2009/0133027 A1	May 21, 2009

Claims 8–21 stand rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter.

Claims 8–10, 12–17, and 19–21 stand rejected under 35 U.S.C. § 102(b) as anticipated by Gunning.

Claims 11 and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Gunning and Nelken.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of novelty turn primarily on whether Gunning describes the recited composite score.

The issues of obviousness turn primarily on the anticipation rejection.

## FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

### *Facts Related to the Prior Art*

#### *Gunning*

01. Gunning is directed to prioritizing the tasks in a project. Gunning para. 2.

02. Gunning describes determining prioritization factors for tasks in a project. An initial list showing the order of the tasks in the project is provided to a user who may be the employee assigned to perform the tasks. The initial order of the tasks may be provided in a graphical format with objects representing each of the tasks so that the user can drag and drop the tasks into the order that they will be performed in. The project management task prioritization system detects the task order adjustments made by the user. The system calculates the relative priority of the affected tasks based on the user's adjustments to the task order. This information can then be used to refine the prioritization factors for the tasks affected by the task order adjustments made by the user. Gunning para. 7.

03. Gunning describes an exemplary neural network system for a project management task prioritization system. As a user alters the order of their tasks, the neural network system is able to further define the prioritization factors used in developing an initial task prioritization order. For example, a user may be assigned to complete the six tasks shown in of FIG. 4A in the order from Task 1 to Task 6. However, the user may prefer to perform Task 5 earlier in the order, moving this task up to the position between Task 1 and Task 2, as shown in 403. The neural network system is able to further define its prioritization factors for these tasks based on Task 5 being moved up in the order by the user. Gunning para. 25.

04. Gunning describes the inputs for the neural net as including a pre-specified list of dimensions. The dimensions are variables that affect or control the scheduling of the project tasks. Dimensions may be anything from dependent tasks, due dates and deadlines, costs, employee skill levels, team preferences, or any other factor that might affect the priority of a given task. Typically, the dimensions are the same for two tasks being compared. Gunning para. 26.

05. Gunning describes activities in an exemplary method for project management task prioritization. The project information generally includes the project schedule and deadlines, as well as a description or specification for the project. Gunning para. 28.

#### ANALYSIS

*Claims 8–21 rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter*

Computer program product claim 8 recites a process performed by the preamble product, and so is essentially equivalent to a method claim. Claim 8 recites receiving task data, identifying indicator of importance data, generating score data, and generating composite score data. Thus, claim 8 recites receiving, analyzing, and modifying data. None of the limitations recite implementation details for any of these steps, but instead recite functional results to be achieved by any and all possible means. Data reception, analysis, and modification are all generic, conventional data processing operations to the point they are themselves concepts awaiting

implementation details. The sequence of data reception-analysis-modification is equally generic and conventional. The ordering of the steps is therefore ordinary and conventional. The remaining claims merely describe parameters for the ordering, with no implementation details.

### The Supreme Court

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, [] 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, [] 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. [The Court] 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., Pty. Ltd. v. CLS Bank Intl*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner determines the claims directed to ordering tasks, which is an idea of itself and/or certain methods of organizing human activity. Final Act. 9.

Although the Court in *Alice* made a determination as to what the claims were directed to, we find that this case’s claims themselves and the

Specification provide enough information to inform one as to what they are directed.

The preamble to claim 8 recites that it is a product for dynamically ordering tasks in a task list. The steps in claim 8 result in generating a composite score for each of said plurality of tasks. The Specification at paragraph 1 recites that the invention relates to dynamically ordering tasks in a task list based on the indications of importance to the user. Thus, all this evidence shows that claim 8 is directed to ordering tasks, i.e. task management. This is consistent with the Examiner's determination.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v. Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. The concept of task management is a fundamental business practice long prevalent in our system of commerce. The use of task management is also a building block of ingenuity in project management. Thus, task management, like hedging, is an “abstract idea” beyond the scope of § 101. *See Alice Corp. Pty. Ltd.* at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of task management at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357.

Further, claims involving data collection, analysis, and display, without more, are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830

F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 8, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, and transmission and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 8 is directed to the abstract idea of receiving, analyzing, and transmitting data.

The remaining claims merely describe parameters for the ordering. We conclude that the claims at issue are directed to a patent-ineligible concept.

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two,

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption

concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice Corp. Pty. Ltd.*, 134 S.Ct. at 2358 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S.Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to receive, analyze, and modify data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp. v. Alstom S.A.*, *supra*. Also see *In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, 1316 (Fed. Cir. 2011)(“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP America Inc. v. Investpic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellants' method add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-modification is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

Viewed as a whole, Appellants' claims simply recite the concept of task management as performed by a generic computer. To be sure, the claims recite doing so by advising one to generate task composite scores for the ordering from scores based on importance indicators. But, this is no more than abstract conceptual advice on the parameters for such task management and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The 13 pages of Specification do not bulge with

disclosure, but only spell out different generic equipment<sup>2</sup> and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of task management under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of task management using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.* at 2360.

As to the structural claims, they

are no different from [] method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

*Alice Corp. Pty. Ltd.* at 2360.

We are not persuaded by Appellants’ argument that

[c]laims 8-21 do not simply organize information through mathematical correlations as alleged by the Examiner. Instead, claims 8-21 are directed to dynamically ordering tasks in a task list without requiring the user to manually input field

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<sup>2</sup> Specification paragraphs 18 and 19 describe the system as the components of a conventional generic computer in Figure 2. Paragraph 14 describes the client as any computing device.

information, decide task priorities, understand field interactions or choose from complex combinations of sort orders. See, e.g., paragraph [0030] of Appellant's specification. For example, independent claims 8 and 15 recite receiving a plurality of tasks. Receiving tasks is clearly not organizing information through mathematical correlations. Furthermore, claims 8 and 15 recite identifying indicators of importance associated with each of the plurality of tasks, where the indicators of importance are aspects of a task used to assess an importance measure to the task. Identifying indicators of importance associated with each of the plurality of tasks, where the indicators of importance are aspects of a task used to assess an importance measure to the task, is not equivalent to organizing information through mathematical correlations.

Furthermore, claims 8 and 15 recite generating a score for each identified indicator of importance associated with each of the plurality of tasks. What is the mathematical correlation? Mathematical correlation involves the linking of two sets of data. For example, a mathematical correlation is said to be positive when the values increase together; whereas, a mathematical correlation is said to be negative when one value decreases as the other increases.

App. Br. 3–4. The Examiner determines that the claims are directed to ordering tasks, *supra*. The Examiner goes on to determine that “the claims organize task information through mathematical correlations of generating scores and is not tied to specific structure or machine.” Final Act. 10. This is no more than applying the claim to the concept of ordering tasks, as the claims organize task priority information through mathematical correlations between tasks and priority. Although, a somewhat degenerate correlation, it is a perfect one, as the claim assigns it as such. Appellants take the limitations that do not assign the priority information and contend that they have nothing to do with organizing, without admitting that the central step of

identifying indicators of importance does organize the tasks to which the indicators are assigned. As to the correlation involved, Appellants conflate mathematical correlation with statistical measures of correlation. Although we agree that “mathematical correlation involves the linking of two sets of data,” the claims correlate task data with indicator data, rendering the argument moot.

We are not persuaded by Appellants’ argument that “there is no language in the independent claims directed to gathering and combining data, let alone combining data into a single data set.” App. Br. 7. As we find *supra*, the claims retrieve, analyze, and modify data and nothing more. Claim 8 gathers task and indicator data which is analyzed to produce intermediate scores which in turn are combined into a single data set of composite scores. As *Electric Power* held, intermediate analysis as such is part of an abstract idea.

We are not persuaded by Appellants’ argument that

if the Examiner is asserting that claims 8-21 are directed to non-statutory subject matter because they involve software implemented on a generic computer, the assertion is in error. Otherwise, software, in essence, could not be patented which would greatly reduce the number of application filings in the software arts.

*Id.* at 8

We agree that software may be patentable if it recites more than the practice of an abstract idea. To do so, the claims must recite some particular technological improvement rather than a series of functions to be achieved by any and all possible means.

We conclude that the limitations of the '545 claims do not transform the abstract idea that they recite into patent-eligible subject matter because the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity. . . . Adding routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet does not transform an otherwise abstract idea into patent-eligible subject matter. Instead, the claimed sequence of steps comprises only “conventional steps, specified at a high level of generality,” which is insufficient to supply an “inventive concept.”

*Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d at 715.

We are not persuaded by Appellants’ argument that

in order to understand what constitutes an abstract idea being a method of organizing human activity, it would appear that one must refer to *Bilski v. Kappas*, 95 U.S.P.Q.2d 1001 (U.S. 2010). In *Bilski*, the U.S. Supreme Court held that the claimed method of hedging risk in the field of commodities trading is not drawn to a patent eligible “process” under 35 U.S.C. §101, since one claim of the patent application describes the basic concept of hedging, and a second claim of the patent application reduces the concept to a simple mathematical formula. *Bilski*, 95 U.S.P.Q.2d 1001, 1009-1010 (U.S. 2010).

Consequently, the key question that needs to be answered is whether claims 8-21 in the present application are analogous to the method of hedging risk in *Bilski*. As the U.S. Supreme Court noted in *Bilski*, one of the claims was deemed to be an abstract idea since it described the basic concept of hedging. Claims 8-21 clearly do not describe a basis concept of organizing a human activity. Claims 8-21 are directed to providing means for dynamically ordering tasks in a task list without requiring the user to manually input field information, decide task priorities, understand field interactions or choose from complex combinations of sort orders.

App. Br. 9. Appellants conflate the *Bilski* holding with the example it applied to. *Bilski* held that a claim that “describes the basic concept” was directed to an abstract idea. The *Bilski* example was hedging. Here, it is task organization. As a task as such is an abstraction of the work it describes, ordering of such abstractions remains an abstract idea. “Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract.” *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (2017). The contended “means for dynamically ordering tasks in a task list” is again data reception, analysis, and modification, among the most fundamental data processing operations, absent any technological improvements.

We are not persuaded by Appellants’ argument that the claims “are directed to dynamically ordering tasks in a task list without requiring the user to manually input field information, decide task priorities, understand field interactions or choose from complex combinations of sort orders.” App. Br. 10–11. The claims do not recite the absence of requiring user involvement, and such user involvement are within the scope of “identifying indicators of importance associated with each of said plurality of tasks.” Claim 8. Further, just as the aphorism “a stitch in time saves nine” dynamically maintains the status quo with a single stitch without requiring the user to enter nine stitches, the aphorism remains one of the most widely known abstract concepts.

We are not persuaded by Appellants’ argument that “it does not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet.

Instead, the claimed solution is necessarily rooted in identifying ‘indicators of importance’ related to the particular task in question.” App. Br. 15–16. Identifying indicators of importance related to the particular task is an abstract concept if only because such indicators of importance are themselves abstract ideas. Whether the indicators also represent physical entities as well is not pertinent, as the claims do not call for relying on such representation. Further, to say that such identification is not an old business practice is to ignore all manufacture process planning since the industrial revolution.

We are not persuaded by Appellants’ argument that the Examiner has not provided any evidence that claims 8–21 are well-understood, routine and well-known to the industry. App. Br. 18. We cite court cases holding that the claim elements, both separately and as an ordered combination, are ordinary, conventional, or otherwise abstract, *supra*.

We are not persuaded by Appellants’ argument that “claimed invention addresses such a problem by improving the technology of task management systems.” Reply Br. 10. A task management system, as such, is not necessarily computer dependent, being a system of steps performed to manage tasks. This is not a technological practice that would be improved, but instead an organizational practice, applicable to people performing tasks.

The remaining arguments are similar to those we address, *supra*.

*Claims 8–10, 12–17, and 19–21 rejected under 35 U.S.C. § 102(b) as  
anticipated by Gunning*

We are persuaded by Appellants' argument that:

There is no language in the cited passages that discloses generating a composite score. Neither is there any language in the cited passages that discloses generating a composite score for each of the plurality of tasks based on the scores for the identified indicators of importance associated with each of the plurality of tasks, respectively. Instead, Gunning discloses comparing the task injected into the list with the tasks that already populate the ordered list. [0028]. Gunning further discloses that for the comparison of each cycle, if the output is greater than 0.5, then the first task is greater than the second (i.e., the first task has a higher priority than the second task) and the output is 1. [0028]. However, if the value is less than 0.5, then the second task has a higher priority than the first task and the output is 0. [0028]. The output of "1" and "0," which the Examiner equates as corresponding to the claimed composite score, is not being generated for each of the tasks. Instead, the output is simply based on whether the first task has a higher or lower priority in comparison to the second task being compared as illustrated in Figure 4B of Gunning. The output value is not a composite score, let alone a composite score that is generated for each of the tasks based on scores for the identified indicators of importance associated with each of the tasks, respectively. The Examiner had previously equated the values of the neurons discussed in paragraph [0026] of Gunning as corresponding to the scores for the identified indicators of importance (see Office Action (12/16/2015), page 12). However, the output values discussed in paragraph [0028] of Gunning and demonstrated in Figure 4B of Gunning are clearly not based on such values. Furthermore, the Examiner had previously cited to the prioritization factors of Gunning as corresponding to the claimed identified indicators of importance. Gunning clearly does not disclose that the output values discussed in paragraph [0028] of Gunning are generated

for each of the tasks based on scores for the prioritization factors associated with each of the tasks, respectively.

Reply Br. 17. We note that the definition of composite as an adjective in the claimed context is “made by combining two or more existing things.”<sup>3</sup>

*Claims 11 and 18 rejected under 35 U.S.C. § 103(a) as unpatentable over Gunning and Nelken*

These claims depend from the claims rejected under anticipation and the Examiner makes no findings that would show Nelken to make up for the anticipation deficiencies.

#### CONCLUSIONS OF LAW

The rejection of claims 8–21 under 35 U.S.C. § 101 as directed to non–statutory subject matter is proper.

The rejection of claims 8–10, 12–17, and 19–21 under 35 U.S.C. § 102(b) as anticipated by Gunning is improper.

The rejection of claims 11 and 18 under 35 U.S.C. § 103(a) as unpatentable over Gunning and Nelken is improper.

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<sup>3</sup> American Heritage Dictionary, last visited Oct. 12, 2018, <https://www.ahdictionary.com/word/search.html?q=composite>

Appeal 2017-001904  
Application 13/744,119

DECISION

The rejection of claims 8–21 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED