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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER KENNEDY and BRYAN HURLEY

Appeal 2017-002241
Application 13/608,194¹
Technology Center 3600

Before ANTON W. FETTING, BRUCE T. WIEDER, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1–3, 6, 16, 17, and 21–30. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Appellants' "invention relates to a method and system for managing financial transactions that require goods and/or services from multiple

¹ According to Appellants, the real party in interest is Altisource Solutions S.à.r.l. of Luxembourg. (Appeal Br. 3.)

vendors, and, in particular, to methods and systems for selecting vendors to carry out sub-transactions associated with a financial transaction.” (Spec.

¶ 2.)

Claims 1, 16, and 26 are the independent claims on appeal. Claim 1 is illustrative. It recites (bracketed paragraph designations added):

1. A method for selecting a vendor for at least one transaction having a transaction profile using at least one processor, a scorecard module, and a user interface, the method comprising:
 - populating, via the at least one processor, a list of available products corresponding to the at least one transaction;
 - receiving, via the at least one processor in communication with the user interface, a selection of an identified product related to the at least one transaction;
 - determining, via the at least one processor, if an ordering profile corresponding to the identified product exists, the ordering profile comprising at least one desired characteristic associated with the identified product;
 - comparing, via the at least one processor, the at least one desired characteristic to characteristics associated with each vendor contained in a first plurality of vendors to yield a second plurality of vendors capable of providing the identified product;
 - [(a)] accessing, via the at least one processor in communication with the scorecard module, a plurality of vendor scorecards for each vendor in the second plurality of vendors;
 - [(b)] prompting, via the processor in communication with the user interface, a user to select a preferred scorecard from the plurality of vendor scorecards;
 - [(c)] upon selection of a preferred scorecard, creating, via the processor, a prioritized vendor set for the second plurality of vendors according to the preferred scorecard; and
 - [(d)] automatically selecting, via the at least one processor, at least one vendor from the prioritized vendor set using a distribution selection method.

REJECTION

Claims 1–3, 6, 16, 17, and 21–30 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

“Whoever 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.” 35 U.S.C. § 101. Section 101, however, “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Alice applies a two-step framework, earlier set out 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*, 134 S. Ct. at 2355.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* If the claims are determined to be directed to a patent-ineligible concept, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 2357 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, the Examiner determines that “claims 1, 16 and 26 are directed to an abstract idea of selecting a vendor for a transaction for supplying a product.” (Final Action 5.) Although Appellants assert that they “do not concede” that the claims are directed to an abstract idea (Appeal Br. 9), Appellants do not present arguments against this determination.

The Specification provides evidence supporting the Examiner’s determination. The Specification discloses that the “invention relates to a method and system for managing financial transactions that require goods and/or services from multiple vendors.” (Spec. ¶ 2.) Claims 1, 16, and 26 provide further evidence. For example, claim 16 recites “[a] system for selecting a vendor for at least one transaction for a product or service,” and claim 26 recites “[a] method for automatically identifying at least one vendor for supplying a product or service associated with at least one transaction.” In view of the above, we agree with the Examiner’s determination that the claims are directed to the “abstract idea of selecting a vendor for a transaction for supplying a product.” (See Final Action 5.)

We now look to step two of the *Alice* framework. Step two has been described “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*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 72–73).

Appellants argue that the Examiner “fails to appropriately establish a *prima facie* rejection under the second prong analysis of *Mayo/Alice* because the *Final Office Action* fails to point to any evidence on record that

demonstrates that the steps recited in the claim are only ‘conventional’ and ‘routine’ steps performed in the industry.” (Appeal Br. 9.)

The Examiner finds that the “specification describes the computer processor as a generic computer (See e.g. [0021]-[0028]). There is no dispute that the claimed process is implemented on a generic computer or generic computer arrangement comprising a processor, a memory etc.” (Final Action 6–7.) Further, the Examiner determines that steps (a)–(d) of claim 1

are not unconventional because implementation of these steps on a generic computer (at least one processor) amount to appending well-understood, routine and conventional activities previously known to the industry to the abstract idea. This is in turn because these four steps require no more than a generic computer and peripheral components (specification [0020], [0022]) and programming the instructions to perform the functions in suitable programming tools.

(*Id.* at 8.)

We disagree that a prima facie case has not been established. The USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, ““together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.”” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (brackets in original, quoting 35 U.S.C. § 132(a)). Here, the Examiner notified Appellants that the claims are directed to a patent-ineligible abstract idea, i.e., that the claims “are directed to an abstract idea of selecting a vendor for a transaction for supplying a product.” (Final Action 5.) The Examiner also notified Appellants that the steps “in the

claims are not deemed unconventional activities but merely appending well-understood, routine and conventional activities which are not found to be enough to qualify as ‘significantly more’.” (*Id.* at 8.) Thus, Appellants have been notified of the reason for the rejection with such information “as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See* 35 U.S.C. § 132(a).

Appellants further argue that “the law requires that the [claim] *steps themselves* be new and useful, not whether their implementation on a computer is new and useful. Here steps (a)-(d) are additional steps as they fall outside the scope of the abstract idea, thus the claim as a whole ‘requires more than simply stating the abstract idea while adding the words “apply it.”’ *Ultramerical* at 10.” (Appeal Br. 12, citing *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014).)

Appellants’ argument is premised on the assertion that “steps (a)-(d) are additional steps as they fall outside the scope of the abstract idea.” (*Id.*) But the abstract idea determined by the Examiner is that “of selecting a vendor for a transaction for supplying a product.” (Final Action 5.) Steps (a)-(d) recite “accessing . . . a plurality of vendor scorecards,” “prompting . . . a user to select a preferred scorecard,” “creating . . . a prioritized vendor set,” and “selecting . . . at least one vendor from the prioritized vendor set.” In short, steps (a)-(d) relate directly to selecting a vendor for a transaction. Therefore, we disagree with Appellants that “steps (a)-(d) are additional steps as they fall outside the scope of the abstract idea.” Thus, we do not find Appellants’ argument persuasive. Moreover, to the extent Appellants are arguing that the abstract idea recited in the steps establishes the “significantly more” element under step two, we disagree. “[U]nder the

Mayo/Alice framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016). In other words, we must look 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 (emphasis added) (quoting *Mayo*, 566 U.S. at 72–73).

Appellants argue that the Examiner has not established that the claims do not amount to significantly more because “[n]o evidence of any kind has been submitted, whether through judicial notice, submission of prior art, or otherwise which demonstrates that the process steps recited in the claims are in fact conventional and routine steps.” (Appeal Br. 12; *see also Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (“Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.”).)

As an initial matter, we note that the claim steps argued by Appellants, steps (a)–(d), when stripped of the “processor” language, recite steps of the abstract idea that people could perform in their heads or with pencil and paper, i.e., “accessing . . . a plurality of vendor scorecards,” “select[ing] a preferred scorecard,” creating . . . a prioritized vendor set,” and selecting . . . a . . . vendor from the . . . set.” (*See* Claim 1.) The processor merely automates these steps. As noted above, the Examiner finds evidence in Appellants’ Specification that “describes the computer processor as a generic computer (See e.g. [0021]-[0028]). There is no dispute that the claimed process is implemented on a generic computer or generic computer

arrangement comprising a processor, a memory etc.” (Final Action 6–7.) Specifically, the Examiner determines that claim steps (a)–(d) “require no more than a generic computer and peripheral components (specification [0020], [0022]) and programming the instructions to perform the functions in suitable programming tools.” (*Id.* at 8.) In other words, Appellants’ Specification supports the determination that the steps of using a computer to access data, prompt user selection, create a set, and select from the set, are conventional. (*Id.*; see also *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (the steps of collecting, analyzing and displaying information, even if limited to a specific content, are conventional).) Thus, “[t]he limitations [(steps)] amount to no more than performing the abstract idea of [“selecting a vendor for a transaction for supplying a product”] with conventional computer components.” See *Berkheimer*, 881 F.3d at 1370.

In view of the above, we do not agree with Appellants that “[n]o evidence of any kind has been [cited] . . . which demonstrates that the process steps recited in the claims are in fact conventional and routine steps.” (See Appeal Br. 12, emphasis omitted.)

Thus, we agree with the Examiner that claim 1 is directed to a judicial exception under § 101, without significantly more. Claims 2, 3, 6, 16, 17, and 21–30 are not separately argued and fall with claim 1. See 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

The Examiner’s rejection of claims 1–3, 6, 16, 17, and 21–30 under 35 U.S.C. § 101 is affirmed.

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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