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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 14/102,389, inventor Ronald Raikula, and examiner MINCARELLI, JAN P.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RONALD RAIKULA

Appeal 2017-002352
Application 14/102,389¹
Technology Center 3600

Before JASON V. MORGAN, NABEEL U. KHAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner’s decision rejecting claims 1, 2, 5, 7–17, 20, and 22–32, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ FMR LLC (“Appellant”) is the applicant, as provided for under 37 C.F.R. § 1.46, and is also identified in the Brief as the real party in interest. *See* Appeal Br. 2.

STATEMENT OF THE CASE

Invention

Appellant's invention relates to "making charitable contributions automatically from multiple funding sources associated with a donor." Spec. ¶ 1.² Namely, the invention "allow[s] for a donor to use his or her mobile device to initiate one or more donation transactions that link to multiple funding sources associated with the donor, including emergent funding sources like a charitable giving account." Spec. ¶ 3.

Exemplary Claim

Claims 1 and 16 are independent. Claim 1 is exemplary and is reproduced below.

1. A computerized method for making a charitable contribution, the method comprising:
 - scanning, by a reader coupled to a mobile device, a barcode;
 - converting, by an application executing on the mobile device, the barcode into a transaction identifier associated with a charitable contribution transaction;
 - generating, by the application executing on the mobile device, a request to initiate the charitable contribution transaction, the request including the transaction identifier and a user identifier stored on the mobile device that is different from the transaction identifier;

² Throughout this Decision, we refer to: (1) Appellant's Specification, filed December 10, 2013 ("Spec."); (2) the Final Office Action ("Final Act."), mailed June 15, 2015; (3) the Appeal Brief, filed April 4, 2016 and the Supplemental Appeal Brief, filed August 16, 2016 ("Appeal Br."); (4) the Examiner's Answer ("Ans."), mailed September 28, 2016; and (5) the Reply Brief ("Reply Br."), filed November 28, 2016.

receiving, by a server computing device, the request to initiate the charitable contribution transaction from the mobile device;

determining, by the server computing device, a plurality of characteristics associated with the charitable contribution transaction from a database of pre-encoded charitable contribution transactions based upon the transaction identifier, the plurality of characteristics including a predefined contribution amount and a processing fee amount to be deducted from the predefined contribution amount;

identifying, by the server computing device, a user based upon the user identifier;

determining, by the server computing device, whether the user is associated with an existing charitable giving account;

automatically establishing, by the server computing device, a charitable giving account for the user if the user is not associated with an existing charitable giving account;

automatically approving, by the server computing device, the charitable contribution transaction without requiring donor authorization;

charging, by the server computing device, a first portion of the contribution amount to a first account associated with the user and a second portion of the contribution amount to a second account associated with the user, wherein the first account is not a charitable giving account;

depositing, by the server computing device, the first portion of the contribution amount into the charitable giving account; and

transmitting, by the server computing device, payment instructions to a computing device associated with a recipient charity, the payment instructions including instructions to debit the first portion of the contribution amount from the newly-established charitable giving account and instructions to waive the processing fee amount if the processing fee amount is greater than zero.

REFERENCES

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Gruber	US 2006/0212390 A1	Sept. 21, 2006
Marble	US 2009/0192873 A1	July 30, 2009
Merriman	US 2013/0103603 A1	Apr. 25, 2013
Hicks et al. (“Hicks”)	US 2013/0151433 A1	June 13, 2013
Kalinichenko et al. (“Kalinichenko”)	US 2013/0304644 A1	Nov. 14, 2013
Grigg et al. (“Grigg”)	US 2014/0006259 A1	Jan. 2, 2014

REJECTIONS

Claims 1, 2, 5, 7–17, 20, and 22–32 stand rejected under 35 U.S.C. § 112(a), as failing to comply with the written description requirement. Final Act. 2–4.

Claims 1, 2, 5, 7–17, 20, and 22–32 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 5–8.

Claims 1, 2, 7–10, 12–17, 22–25, and 27–30 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Merriman, Gruber, Kalinichenko, and Marble. Final Act. 8–25.

Claims 5 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Merriman, Gruber, Kalinichenko, Marble, and Grigg. Final Act. 25–27.

Claims 11 and 26 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Merriman, Gruber, Kalinichenko, Marble, and Hicks. Final Act. 25–29.

Claims 31 and 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Merriman, Gruber, Kalinichenko, Marble, and Hosny. Final Act. 29–32.

Our review in this appeal is limited only to the above rejections and the issues raised by Appellant. Arguments not made are waived. *See* MPEP § 1205.02 (9th ed., rev. 7; Oct. 2015); 37 C.F.R. §§ 41.37(c)(1)(iv) and 41.39(a)(1) (2015).

ANALYSIS

Rejection Under § 101

Issue: Whether the Examiner properly rejects the claims under 35 U.S.C. § 101 as being directed to non-patentable subject matter?

Appellant argues the claims as a group. *See* Appeal Br. 9.³ We select independent claim 1 as exemplary of Appellant’s arguments for claims 2, 5, 7–17, 20, and 22–32. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

The Examiner determines claim 1 is directed to a fundamental economic practice as well as a method of organizing human activities, and, thus, recites an abstract idea. *See* Final Act. 6–7; Ans. 4. The Examiner also determines the claim does not include “any element or combination of elements . . . sufficient to ensure that the claim amounts to significantly more than the abstract idea itself.” Final Act. 6.

Appellant presents several arguments against the § 101 rejection. We do not find Appellant’s arguments persuasive. The Examiner has provided a comprehensive response to Appellant’s arguments supported by a

³ The Appeal Brief lacks page numbers so all page numbers cited herein are estimates.

preponderance of evidence. *See* Ans. 3–8. Thus, we adopt the Examiner’s findings and conclusions. *See* Final Act. 5–8; Ans. 3–8.

Section 101 provides that “[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.” 35 U.S.C. § 101. The provision, 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.*, 133 S. Ct. 2107, 2116 (2013)). The “abstract ideas” category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice*, 134 S. Ct. at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). 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. *Alice*, 134 S. Ct. at 2355.

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.’” *Alice*, 134 S. Ct. at 2355 (brackets in original) (quoting *Mayo*, 132 S. Ct. at 1294). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the [abstract idea] to a particular technological environment’ or adding ‘insignificant postsolution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (quoting *Diamond v. Diehr*, 450 U.S. 175, 191–92 (1981)).

Initially, the Examiner determines and we agree that independent claim 1 recites steps for a method. *See* Final Act. 6. As such, we agree with the Examiner that claim 1 is directed to a statutory class of invention within 35 U.S.C. § 101. *Id.* Turning to the first step of the *Alice* inquiry, we must determine whether claim 1, being directed to a statutory class of invention, nonetheless falls within a judicial exception. We agree with the Examiner that “[f]acilitating a payment to a charitable organization is . . . an abstract idea because it is both a fundamental economic activity as well as a method of organizing human activities” (Final Act. 6–7) and because such activities fit squarely within the realm of abstract ideas. Appellant, in turn, does not rebut the Examiner’s determination that claim 1 is directed to a fundamental economic activity or a method of organizing human activities, or both. *See* Appeal Br. 9–13.

Rather, Appellant argues claim 1 is not abstract because “[a]s in *Enfish*, the claims presented herein, when viewed as a whole, are directed to a technical solution unique to computerized, automated payment

transaction.” Reply Br. 3 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)).

This argument is unpersuasive because claim 1, here, is unlike the claims in *Enfish*. In *Enfish*, our reviewing court relied on the distinction made in *Alice* between computer-functionality improvements and uses of existing computers as tools in aid of processes focused on “abstract ideas” (in *Alice*, as in so many other § 101 cases, the abstract ideas being the creation and manipulation of legal obligations such as contracts involved in fundamental economic practices). *Enfish*, 822 F.3d at 1335–36; *see also Alice*, 134 S. Ct. at 2358–59. In *Enfish*, the § 101 challenge was found persuasive at the first step of the *Alice* analysis because the claims at issue focused, not on asserted advances in uses to which existing computer capabilities could be put, but on a specific improvement—a particular database technique—in how computers could carry out one of their basic functions of storage and retrieval of data. *Enfish*, 822 F.3d at 1335–36.

Here we are unpersuaded because the present case is different from *Enfish*. Specifically, the focus of claim 1 is not on an improvement in computer-functionality, as in *Enfish*, but on an abstract idea that uses a computer as a tool to perform a method facilitating payment to a charitable organization.

Turning to the second step of the *Alice* inquiry, the Examiner determines, and we agree, that the claimed structural elements “(e.g., a mobile device scanning a code and a server computing device that performs the payment processing functions), when taken in combination with the functional elements of creating a financial account and processing a payment to a charitable organization, together do not offer ‘significantly more’ than

the abstract idea itself.” Final Act. 7. The Examiner also correctly finds that “Applicant’s specification discloses mere general purpose computing equipment for performing the steps of the invention.” Final Act. 7 (citing Spec. ¶¶ 57, 62). “Thus, the claims require no more than a generic mobile device and a generic computer server to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.” Final Act. 7–8.

Appellant argues claim 1, like the claims in *DDR Holdings*, recites “an ordered combination of elements that overcome a problem arising in the technical field of the invention, in this case automated and electronic payment processing of charitable contributions, including establishment of a giving account, using mobile devices.” Appeal Br. 12 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (finding an inventive concept in the modification of the conventional mechanics behind website display to produce a dual-source integrated hybrid display)). Appellant further argues that “[s]imilar to the claimed invention in *DDR*, Applicant’s claims recite elements that are necessarily rooted in computer technology in order to overcome a problem specifically arising in the context of making charitable contributions in a computerized environment using mobile devices.” *Id.*

We disagree. The solution offered by Appellant’s claim 1 is not rooted in any novel computer technology, as evidenced by claim 1’s recitation of “a generic mobile device and a generic computer server to perform generic computer functions.” Final Act. 7–8. Likewise, Appellant’s Specification identifies a problem that “[t]raditionally, making charitable contributions has been a slow and inefficient process that requires

donors to submit funds manually or “without effective control over those source(s) from which the charitable donation is drawn” if the charities “allow donors to submit contributions electronically.” Spec. ¶ 2.

Appellant’s claimed invention seeks to solve the identified problem by “allow[ing] for a donor to use his or her mobile device to initiate one or more donation transactions that link to multiple funding sources associated with the donor.” Spec. ¶ 3.

This problem is a business problem, not a technical problem. Claim 1 recites a specific way and specific context for facilitating charitable contributions from different accounts—namely, by “charging, by the server computing device, a first portion of the contribution amount to a first account associated with the user and a second portion of the contribution amount to a second account associated with the user.” *See* claim 1, Spec., ¶¶ 37, 45, 49. While these steps limit the scope of the abstract idea, the limitations are not sufficient to transform Appellant’s otherwise patent-ineligible abstract idea into patent-eligible subject matter. Fundamentally, the solution Appellant offers is “an entrepreneurial, rather than a technological, one.” *DDR*, 773 F.3d at 1265 (Mayer, J., dissenting).

Appellant argues claim 1 is nonetheless patentable because it does “not monopolize or preempt others from employing similar methods for the alleged abstract ideas of ‘making a charitable contribution’ or ‘creation of a charitable giving account.’” Appeal Br. 14 (citing *Tuxis Technologies, LLC v. Amazon.com, Inc.*, 2014 WL 4382446 (D. Del. Sept. 3, 2014)). We are unpersuaded, however, because Appellant’s cited case is not controlling law and does not have legal weight commensurate with guidance from the Federal Circuit, which is our reviewing court. Rather than preemption, the

Federal Circuit instructs that the *Alice* two-step analysis is the test for whether claims are statutory. “While 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). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Id.*

Appellant argues claim 1, when considered as an ordered combination, “provide[s] unconventional steps that confine [the claim] to particular computer hardware configured for a particular useful application, like the claims in *Bascom*. Reply Br. 5 (citing *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)).

We disagree because claim 1’s invocation of “a generic mobile device and a generic computer server to perform generic computer functions” (Final Act. 6) does not transform the claimed subject matter into a patent-eligible application. Claim 1 does not require any nonconventional computer components, or even a “non-conventional and non-generic arrangement of known, conventional pieces,” but merely calls for performance of the claimed functions “on a set of generic computer components.” *Bascom*, 827 F.3d at 1349–52. Nor does claim 1 require an inventive distribution of functionality within a network, thus distinguishing the claims at issue from those in *Bascom*, 827 F.3d at 1350 (finding sufficient inventive concept in “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user”).

Appellant further argues “Federal Circuit decisions (*McRO*⁴ and *Amdocs*⁵) support a finding that Applicant’s claims are patent eligible” because claim 1 recites “certain computing devices arranged and operating in a narrow, unconventional configuration that results in more efficient transaction processing.” Reply Br. 5 (footnote numbers changed).

We are unpersuaded because Appellant fails to provide evidence demonstrating how the claimed computing devices are arranged and operating in a narrow, unconventional configuration.

Because Appellant’s representative claim 1 is directed to a patent-ineligible abstract concept and does not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of this claim under 35 U.S.C. § 101 as being directed to non-patentable subject matter in light of *Alice* and its progeny. The rejection of claims 2, 5, 7–17, and 22–32, which are not argued separately, is sustained for the same reasons.

Rejection Under § 112, first paragraph

Issue: Whether the Examiner errs in finding Appellant’s Specification (the “Specification”) lacks written support for the limitation “automatically establishing, by the server computing device, a charitable giving account for the user if the user is not associated with an existing charitable giving account,” as recited in claim 1.

⁴*McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

⁵*Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300 (Fed. Cir. 2016), cert. denied, 138 S. Ct. 469 (2017)

The Examiner finds the Specification lacks written support for the limitation “automatically establishing, by the server computing device, a charitable giving account for the user if the user is not associated with an existing charitable giving account,” as recited in claim 1. Final Act. 2–4. Specifically, the Examiner finds:

The only support for the newly amended steps and limitations is the following sentence in paragraph 52 of Applicant’s specification: “The server computing device can charge the contribution amount to an alternative funding source (e.g., a credit card), allocate those funds into a new charitable giving account, and then distribute the funds from the charitable giving account to the recipient charity.” Therefore, Applicant fails to disclose any specifics about creating a charitable giving account other than that one conclusory sentence.

Final Act. 3 (citing ¶ 52).

Appellant argues the Specification “is sufficiently detailed such that one of ordinary skill in the art would understand both how to create an account and why creation of the account is important in solving the problems addressed by the invention.” Appeal. Br. 18 (citing ¶¶ 51–53).

Whether a specification complies with the written description requirement of 35 U.S.C. § 112(a), is a question of fact and is assessed on a case-by-case basis. *See, e.g., Purdue Pharma L.P. v. Faulding, Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000) (citing *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1561 (Fed. Cir. 1991)). The disclosure, as originally filed, need not literally describe the claimed subject matter (i.e., using the same terms or *in haec verba*) in order to satisfy the written description requirement. But the Specification must convey with reasonable clarity to those skilled in the art that, as of the filing date, Appellant was in possession of the claimed invention. *See Purdue*, 230 F.3d at 1323. A written-description question

often arises when an applicant, after filing a patent application, subsequently adds “new matter” to the claims not present in the original application. *Vas-Cath*, 935 F.2d at 1560. When an applicant amends a claim to introduce new elements or limitations or adds claims during prosecution, for example, the newly claimed subject matter must find written description support in the *original specification*. *Id.*

We find Appellant’s argument unpersuasive. The limitation at issue was newly added by amendment during prosecution and lacks express support in the original Specification. *See* Amendment filed May 12, 2014. Although the portion of the Specification cited by Appellant discloses allocating credit card funds into a new account, it does not explicitly disclose “automatically establishing the new account.” Appellant, although block-quoting paragraphs 51–53, provides no further explanation. *See* Appeal Br. 15–17. Appellant, therefore, also fails to demonstrate that the Specification provides implicit or inherent support for automatically establishing a charitable giving account, as set forth in claim 1.

Accordingly, we sustain the Examiner’s rejection of claim 1, under 35 U.S.C. § 112(a). For similar reasons, we also sustain the Examiner’s rejection of claims 2, 5, 7–17, and 22–32 under 35 U.S.C. § 112(a).

Rejections Under § 103

Issue: Whether the Examiner errs in finding claim 1 is obvious over the combination of Merriman, Gruber, Kalinichenko, and Marble.

Appellant argues “the methodology for opening a financial account that is taught in Kalinichenko would be undesirable for integration into Applicant’s claimed invention.” Appeal Br. 20. “As such, one of ordinary

skill in the art would not look to Kalinichenko’s method of opening a financial account via a mobile device as a way to solve the deficiencies of Merriman and Gruber, and Applicant submits that the combination . . . cannot be used to render Applicant’s claims obvious.” Appeal Br. 21.

Appellant’s argument that Kalinichenko’s methodology “would be undesirable for integration into Applicant’s claimed invention” (Appeal Br. 20) is unpersuasive because whether a reference is desirable for integration into the claimed invention is not the standard for obviousness. Rather, the standard for obviousness is whether a skilled artisan would have had reason to combine the teachings of the prior art references to achieve the claimed invention. *See PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1193 (Fed. Cir. 2014). Appellant’s argument that “one of ordinary skill in the art would not look to Kalinichenko’s method of opening a financial account via a mobile device as a way to solve the deficiencies of Merriman and Gruber” is unpersuasive because Appellant does not specifically address the Examiner’s rationale for combining the references and so fails to persuade us the Examiner’s articulated reasoning lacks some rational underpinning. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds [require] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”) (cited with approval in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)).

Next, Appellant argues “Merriman, Gruber and Kalinichenko further fail to teach . . . the element of ‘payment instructions including instructions to debit the first portion of the contribution amount from the newly-established charitable giving account and instructions to waive the

processing fee amount if the processing fee amount is greater than zero” because Marble “does not teach automatically establishing a charitable giving account as set forth in Applicant’s claims.” Appeal Br. 21.

Appellant’s argument unpersuasively attacks Marble individually when the Examiner’s rejection is based on the combination of Merriman, Gruber, Kalinichenko, and Marble. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citation omitted) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”). In particular, the argument is unpersuasive because Appellant does not address the Examiner’s combination of Merriman, which the Examiner finds teaches “payment instructions to a computing device associated with a recipient charity” (*See* Final Act. 11), Gruber, which the Examiner finds teaches “payment instructions including instructions to debit the first portion of the contribution amount from the newly-established charitable giving account” (*See* Final Act. 12), and Marble, which the Examiner finds teaches “instructions to waive the processing fee amount if the processing fee amount is greater than zero” (*See* Final Act. 17).

For the reasons discussed, Appellant has not shown error in the Examiner’s factual findings or conclusion of obviousness. Accordingly, we sustain the Examiner’s 35 U.S.C. § 103 rejection of independent claim 1. Independent claims 16 and 30 and dependent claims 2, 5, 7–15, 17, 20, 22–29, 31, and 32 are not argued separately and so the rejections of these claims are sustained for the same reasons given for independent claim 1. *See* Appeal Br. 22.

DECISION

We affirm the Examiner's rejection of claims 1, 2, 5, 7–17, 20, and 22–32 under 35 U.S.C. § 101.

We affirm the Examiner's rejection of claims 1, 2, 5, 7–17, 20, and 22–32 under 35 U.S.C. § 112(a).

We affirm the Examiner's rejections of claims 1, 2, 5, 7–17, 20, and 22–32 under 35 U.S.C. § 103.

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