UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/891,570	08/10/2007	Mark Stimpson	CA920085134US2/1021-026	1871

51871   7590   05/25/2018
Shumaker & Sieffert, P.A.
1625 Radio Drive, Suite 100
Woodbury, MN 55125

EXAMINER
BROCKINGTON III, WILLIAM S

ART UNIT	PAPER NUMBER
3623	

NOTIFICATION DATE	DELIVERY MODE
05/25/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pairdocketing@ssiplaw.com

PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte MARK STIMPSON
and ANDREW THOMAS NELMES

_____

Appeal 2017-002361
Application 11/891,570[1]
Technology Center 3600

_____

Before CARL W. WHITEHEAD, JR., JON M. JURGOVAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the

Examiner's final decision rejecting claims 1–10 and 12–34, which are all the

claims pending in the application.[2] We have jurisdiction under 35 U.S.C.

§ 6(b).

We AFFIRM.

---

[1] Appellants identify the Real Party in Interest as International Business
Machines Corporation. *See* Appeal Br. 3.
[2] Claim 11 is canceled. *See* Appeal Br. 17–18.

STATEMENT OF THE CASE

Invention

Appellants' invention relates "to techniques of entering and presenting data in an enterprise planning and performance management system." Spec. ¶ 6.[3]

Exemplary Claim

Claims 1, 17, and 32 are independent. Claim 1 is exemplary and is reproduced below.

1. A computer-implemented method comprising:

receiving, by a computer, model data that defines an enterprise planning model, wherein the model data comprises action data that specifies one or more tasks, and wherein the action data defines: (i) a plurality of task-specific forms to capture task-specific contribution data on a per-task basis, and (ii) a mapping for storing the task-specific contribution data within a database of multidimensional data;

aggregating, by the computer and based on at least one of a plurality of user-customizable overlay calculations, the task-specific contribution data and business-as-usual contribution data to form aggregate contribution data, wherein the at least one of the plurality of user-customizable overlay calculations specifies how the aggregate contribution data, for a time period, is calculated from an impact of the task-specific contribution data and an impact of the business-as-usual contribution data, including specifying, for a variable, that a first aggregate contribution data of the aggregate contribution data for the variable for a first time period is equal to a sum of the task-

---

[3] Our Decision refers to: Appellants' Appeal Brief filed August 3, 2016 ("Appeal Br."); Reply Brief filed November 23, 2016 ("Reply Br."); Examiner's Answer mailed September 28, 2016 ("Ans."); Final Office Action mailed March 8, 2016 ("Final Act."); and original Specification filed August 10, 2007 ("Spec.").

specific contribution data and the business-as-usual contribution
data for the variable for the first time period, and that a second
aggregate contribution data of the aggregate contribution data for
the variable for a second time period is equal to the task-specific
contribution data for the variable for the second time period;

generating, by the computer, a composite forecast from the
aggregate contribution data, wherein the composite forecast
comprises a composite of a task-specific forecast overlaid with a
business-as-usual forecast in accordance with the at least one of
the plurality of user-customizable overlay calculations; and

in response to receiving user input at a user interface
device that indicates a request to perform at least one of a roll-
back operation, a roll-forward operation, and a show-impact
operation with respect to a pending change to at least one of the
task-specific contribution data and the business-as-usual
contribution data, updating, by the computer, the aggregate
contribution data and a graphical representation of the composite
forecast.

Appeal Br. 15, Claims Appendix.

REJECTION

Claims 1–10 and 12–34 stand rejected under 35 U.S.C. § 101 as
directed to non-patentable subject matter. Final Act. 2–10.

Our review in this appeal is limited only to the above rejection and the
issues raised by Appellants. Arguments not made are waived. *See* Manual
of Patent Examining Procedure (MPEP) § 1205.02; 37 C.F.R.
§§ 41.37(c)(1)(iv), 41.39(a)(1).

ANALYSIS

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

Appellants argue the claims as a group. *See* Appeal Br. 7, 14. We select independent claim 1 as exemplary of Appellants' arguments for claims 2–10 and 12–34. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds claim 1 is "directed to generating forecasts using aggregated data by employing mathematical relationships/formulas, which is an abstract idea." Final Act. 8. The Examiner also finds the claim "does not include limitations amounting to significantly more than the abstract idea" sufficient to transform the abstract idea into a patent eligible application. Final Act. 9.

Appellants present several arguments against the § 101 rejection. We do not find Appellants' arguments persuasive. Instead, we find the Examiner has provided a comprehensive response to Appellants' arguments supported by a preponderance of evidence. *See* Ans. 2–14. As such, we adopt the Examiner's findings and explanations. *See* Final Act. 2–10; Ans. 2–14.

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: "[l]aws 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." *Id.* 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. *Id.* 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.'" *Id.* (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 formula 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 (1981)).

First Step

Initially, independent claim 1 recites steps for a computer-implemented method. As such, claim 1 is directed to a process; a statutory class of invention within 35 U.S.C. § 101. 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 claim 1 is "directed to generating forecasts using aggregated data by employing mathematical relationships/formulas, which is an abstract idea." Ans. 3–4.

Appellants argue claim 1 does not "claim any mathematical algorithms or formulas and do[es] not seek, in practical effect, a patent on any mathematical algorithms or formulas itself." Appeal Br. 9; Reply Br. 4–5.

We are unpersuaded. Claim 1, considered as a whole, relates to generating and updating a composite forecast by aggregating task-specific contribution data and business-as-usual contribution data, based on user-customizable overlay calculations, to form aggregate contribution data. Such business forecasting activities are squarely within the realm of abstract ideas. Generating an enterprise planning forecast by manipulating data is a fundamental business practice long prevalent in our system of commerce, like the risk hedging in *Bilski* (*see Bilski*, 561 U.S. at 593), the intermediated settlement in *Alice* (*see Alice*, 134 S. Ct. at 2356–57), the verifying credit of card transactions in *CyberSource* (*see CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011)), the collecting and analyzing of information to detect and notify of misuses in *FairWarning* (*see FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016)), and the guaranteeing of transactions in *buySAFE* (*see buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014)). Generating an enterprise planning model forecast is also a building block of a market economy. Generating a forecast, like the fundamental business practices *supra*, is an "abstract idea" beyond the scope of § 101. *See Alice*, 134 S. Ct. at 2356.

In addition, we determine Appellants' claim 1, which recites aggregating, manipulating, and generating data, is directed to an abstract idea because the claim is similar to the claims in the *Electric Power Group v. Alstom* decision. The claims in that case related to "real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016). Here, like the claims in *Elec. Power Group v. Alstom*, the "focus of the asserted claims . . . is on collecting information, analyzing it, and displaying certain results of the collection and analysis," and is accordingly directed to an abstract idea. *Id.* at 1354.

Our reviewing court has determined information, as such, is an intangible. *Bayer AG v. Housey Pharm., Inc.*, 340 F.3d 1367, 1372 (Fed. Cir. 2003). Our reviewing court has also treated aggregating and manipulating information as within the realm of abstract ideas. *See, e.g., OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *CyberSource*, 654 F.3d at 1370. Merely generating or displaying the results of abstract processes of collecting and analyzing information (such as by generating a composite forecast (claim 1)), without more, is abstract as an ancillary part of such collection and analysis. *See, e.g., Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014)); *Electric Power Group*, 830 F.3d at 1351; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014).

Appellants argue claim 1 is not abstract because it is "directed to a specific implementation of a solution to a problem in the software arts," like the invention discussed in *Enfish*. Appeal Br. 9 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). Namely, Appellants argue claim 1 is directed to "aggregating data, including 'task-specific contribution data' that are captured via 'a plurality of task-specific forms' and 'generating, by the computer, a composite forecast from the aggregate contribution data'" thereby solving "a problem in the software arts of how to provide a user interface for the user to input data into the computer in a more intuitive, user friendly, and intuitive way." Appeal Br. 10.

This argument is unpersuasive because claim 1, here, is unlike the claims in *Enfish*. There, our reviewing court relied on the distinction made in *Alice* between, on one hand, computer-functionality improvements and, on the other, 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 decision to reject the § 101 challenge was applied at stage one 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.

The present case is different because the focus of claim 1 is not on an improvement in computer-functionality, as in *Enfish*, but on independently abstract ideas that use a computer as a tool, i.e., to collect/aggregate,

analyze/manipulate, and display/generate forecast data; namely, by
aggregating task-specific contribution data and business-as-usual
contribution data, based on user-customizable overlay calculations, to form
aggregate contribution data and to generate a composite forecast. *See*
Appeal Br. 15, claim 1.

We conclude that claim 1 focuses on an abstract idea—and hence
requires stage-two analysis under § 101.

Second Step

Turning to the second step of the *Alice* inquiry, we find nothing in
Appellants' claim 1 that adds "significantly more," sufficient to transform
the abstract concept of collecting/aggregating, analyzing/manipulating, and
generating/displaying information into a patent-eligible application. *Alice*,
134 S. Ct. at 2357. Merely collecting information for analysis and display
does nothing significant to differentiate a process from ordinary mental
processes, whose implicit exclusion from § 101 underpins the information-
based category of abstract ideas. *See Elec. Power Grp.*, 830 F.3d at 1355.
Claim 1 does not require a new source or type of information, or a new
technique for analyzing it. *See Elec. Power Grp.*, 830 F.3d at 1355. And
claim 1 merely recites a "computer-implemented method" implemented by a
generic computer. Consequently, claim 1 does not require an inventive set
of components that would generate new data. *Id.* Moreover, the claim does
not invoke any arguably inventive programming. Merely manipulating data
for display by itself does not transform the otherwise-abstract processes of
information collection and analysis. *Id.*

In addition, nothing in claim 1, understood in light of the Specification, requires anything other than off-the-shelf, conventional computer technology for collecting, analyzing, and displaying the desired data. The Specification indicates the "techniques described herein may be implemented in hardware, software, firmware, or any combination thereof. . . . If implemented in software, the techniques may be realized at least in part by a computer-readable medium comprising" code. Spec. ¶ 146. "The code may be executed by one or more processors, such as one or more digital signal processors (DSPs), general purpose microprocessors, an application specific integrated circuits (ASICs), field programmable logic arrays (FPGAs), or other equivalent integrated or discrete logic circuitry." Spec. ¶ 147. "Network 9 may be any type of communication network, such as a packet-based digital network like the Internet." Spec. ¶ 47. Our reviewing court has repeatedly held that such invocations of generic processors, computers, and networks that are not even arguably inventive are "insufficient to pass the test of an inventive concept in the application" of an abstract idea. *buySAFE, Inc*, 765 F.3d at 1353, 1355; *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015).

Appellants argue the appealed claim, like the claims in *DDR Holdings*, is "'necessarily rooted in computer technology in order to overcome a problem specifically arising in [that technology]'." Appeal Br. 12 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (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); Reply Br. 9. Appellants further argue that

consistent with *DDR Holdings*, "the claimed solution of the present Application . . . overcome[s] a problem specifically arising in providing user interfaces in computers that enable users of the computers to provide user input." Appeal Br. 12.

We disagree. The solution offered by Appellants' claim 1 is not rooted in any novel computer technology, as evidenced by claim 1 reciting a generic computer. Rather than a solution rooted in computer technology, Appellants' Specification identifies a problem that, traditionally, in the course of generating enterprise reports for review by higher management, input "mechanisms typically require tedious rearrangement and/or reentry of interrelated data within the spreadsheet-like screens." Spec. ¶ 5. Appellants' claimed invention seeks to solve the identified problem by providing "techniques [to] facilitate the capture and entry of data into an underlying multidimensional dataset through action-based forms." Spec. ¶ 6.

This problem is a business problem, not a technical problem. Claim 1 recites a specific way and specific context for generating forecast data; namely, "receiving, by a computer, model data," "aggregating, by the computer, and based on [the received model data and] at least one of a plurality of user-customizable overlay calculations," "generating, by the computer, a composite forecast," and "updating, by the computer, [the aggregated data] and a graphical representation of the composite forecast." *See* claim 1. While these steps limit the scope of the abstract concept of collecting, analyzing, and displaying information, the limitations are not sufficient to transform Appellants' otherwise patent-ineligible abstract idea into patent-eligible subject matter. Fundamentally, the solution Appellants

11

offer is "an entrepreneurial, rather than a technological, one." *DDR*, 773 F.3d at 1265 (Mayer, J., dissenting).

Appellants argue the Examiner is required to follow the non-precedential decision of *Ex Parte Scott*, which, according to Appellants, demonstrates claim 1 recites "significantly more than the abstract idea" "because claim 1 is analogous to the claim at issue in *Ex parte Scott*." Appeal Br. 13; *see also* Reply Br. 9.

We are not persuaded. *Ex Parte Scott*[4] is a non-precedential decision of the Board and, thus, is not binding on the USPTO, including both the PTAB and examiners. Routine PTAB decisions are fact-specific to the case being decided and thus are non-precedential. As PTAB Standard Operating Procedure 2 clearly sets forth, "[e]very Board opinion is, by default, a routine opinion until it is designated as precedential or informative" and such "routine opinion[s] [are] not binding authority." PTAB Standard Operating Procedure 2, Rev. 9, § VI(A).[5, 6] Accordingly, *Ex parte Scott* is not binding on the Examiner or this panel in this case.

---

[4] Ex parte STEVEN J. SCOTT, THONG T. NGUYEN, GREGGORY CIESLAK, THOMAS LLOYD HEIDEBRECHT, PETE J. KLEIN, and GARY DAN DOTSON, Appeal 2012-009834 (March 12, 2015), https://e-foia.uspto.gov/Foia/RetrievePdf?system=BPAI&flNm=fd2012009834-03-10-2015-1, (last accessed May 10, 2018)

[5] https://www.uspto.gov/sites/default/files/documents/sop2-revision-9-dated-9-22-2014.pdf (last accessed May 10, 2018).

[6] The only exception is that routine decisions are law of the case for subsequent examination. *See Ex parte Pong*, Appeal 2016-002217, 2017 WL 5714381 (PTAB Nov. 6, 2017); *see also* MPEP § 706.07(h)(XI)(A) (noting that the Board's decision in an application becomes the "law of the case" in that it is controlling on that application and any later related application).

Because Appellants' exemplary 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 2–10 and 12–34, which are not argued separately, is sustained for the same reasons.

DECISION

We affirm the Examiner's rejection of claims 1–10 and 12–34 under 35 U.S.C. § 101.

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