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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAJESH G. SHAKKARWAR

Appeal 2017-002752
Application 13/567,983
Technology Center 3600

Before ANTON W. FETTING, BIBHU R. MOHANTY, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Rajesh G. Shakkarwar (Appellant) seeks review under 35 U.S.C. § 134(a) of a final rejection of claims 1–5, 7–24, and 26–29, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

¹ Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed March 29, 2016) and Reply Brief (“Reply Br.,” filed December 7, 2016), and the Examiner’s Answer (“Ans.,” mailed October 7, 2016), and Final Action (“Final Act.,” mailed August 24, 2015).

The Appellant invented a way of controlling payment processing.
Specification para. 2.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A computer-implemented method for processing a purchase transaction initiated by a user, the method comprising:

[1] receiving, by a payment processing platform, information

transmitted by a financial institution distinct from the payment processing platform

and

specifying a credit card transaction involving a financial product,

wherein the payment processing platform maintains a set of preset rules to manage the form of payment for purchase transactions,

and

wherein the credit card transaction is a transaction approved by the financial institution which debited an amount of funds to pay for the credit card transaction from a credit card account providing financial backing for the financial product;

[2] choosing, by operation of one or more processors of the payment processing platform, a form of payment

for the credit card transaction

based on one of the preset rules relating to the information specifying the transaction;

[3] transmitting, from the payment processing platform to the financial institution, the chosen form of payment

such that the financial institution optionally

credits the credit card account providing financial backing for the financial product via the chosen form of payment

or

removes the debit of the credit card account providing financial backing for the financial product via the chosen form of payment.

Claims 1–5, 7–24, and 26–29 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

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.

ANALYSIS

Method claim 1 recites receiving information specifying a credit card transaction involving a financial product, choosing a form of payment, and transmitting a debit or credit as payment. Thus, claim 1 recites receiving, selecting, analyzing, and transmitting 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, selection, analysis and modification, and transmission are all generic,

conventional data processing operations to the point they are themselves concepts awaiting implementation details. The sequence of data reception–selection–analysis–transmission, even where the transmission is for payment, is equally generic and conventional. The ordering of the steps is therefore ordinary and conventional. The remaining claims merely describe payment processing parameters, 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 finds the claims directed to performing a purchase transaction which is a fundamental economic practice, being a building block of our modern economy. Final Act. 3.

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 to.

The preamble to claim 1 recites that it is a method for processing a purchase transaction initiated by a user. The steps in claim 1 result in transmitting a debit or credit amount related to a payment. The Specification at paragraph 2 recites that the invention relates to controlling payment processing. Thus, all this evidence show that claim 1 is directed to payment processing. This is consistent with the Examiner's finding.

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. Like the risk hedging in *Bilski*, the concept of payment processing is a fundamental economic practice long prevalent in our system of commerce. The use of payment processing is also a building block of ingenuity in finance. Thus, payment processing, 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 payment processing 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 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 1, 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 1 is directed to the abstract idea of receiving, analyzing, and transmitting data.

The remaining claims merely describe payment processing parameters. 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, select, analyze, and transmit data, even where the data represents payment, amounts to electronic data query and retrieval—one of the most basic functions of a computer. *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 Appellant’s method add nothing that is not already present when the steps are considered separately. The sequence of data reception–selection–analysis–transmission is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (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 (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 (2017)(sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellant’s method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellant’s method claims simply recite the concept of payment processing as performed by a generic computer. To be sure, the claims recite doing so by advising one to receive some credit transaction, choose a form of payment, and transmit payment in the form of data representing a debit or a credit. But this is no more than abstract conceptual advice on the parameters for such payment processing

and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method 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 Specification spells out different generic equipment² and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of payment processing 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 payment processing 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 the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic

² The Specification describes the user device as any type of individual computing device such as, for example, a desktop computer, a laptop computer, a hand-held mobile device, a personal digital assistant, or the like. The network may be any type of data network, such as a local area network (LAN), a wide area network (WAN), cellular communications network, the Internet, a voice network such as a standard telephone network, or combinations thereof. Spec. para. 23. The Specification does not describe equipment used in the user authentication server and payment processing platform, but only refers to them as generic black boxes.

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.

As to Appellant’s arguments in the Appeal Brief, we adopt Examiner’s determinations and analysis from the Final Action 2–6 and Answer 6–9 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellant’s argument that the claims are analogous to those in *Enfish*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Reply Br. 3–4. The claims differ from those found patent eligible in *Enfish*, where the claims were “specifically directed to a *self-referential* table for a computer database.” *Enfish*, 822 F.3d at 1337. The claims thus were “directed to a specific improvement to the way computers operate” rather than an abstract idea implemented on a computer. *Id.* at 1336. Here, by contrast, the claims are not directed to an improvement in the way computers operate. Though the claims purport to accelerate the process of analyzing data and shuttling debits and credits for payment processing, our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] not materially alter the patent eligibility of the claimed subject matter.”

Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.), 687 F.3d 1266, 1278 (Fed. Cir. 2012). Instead, the claims are more analogous to those in *FairWarning*, 839 F.3d 1089 (Fed. Cir. 2016), wherein claims reciting “a few possible rules to analyze audit log data” were found directed to an abstract idea because they asked “the same questions (though perhaps phrased with different words) that humans in analogous

situations detecting fraud have asked for decades.” 839 F.3d at 1094, 1095. Although Appellant also contends the claims “facilitates transactions via a ‘child product’ that is linked to one or more core accounts associated with a financial institution” (Reply Br. 4), such child product is itself an abstraction, and is not recited in the claims in any event.

We are not persuaded by Appellant’s argument that the claims are analogous to those in *McRO*. Reply Br. 4–5. The analysis is much the same as in *SAP America*.

Contrary to InvestPic’s contention, the claims here are critically different from those we determined to be patent eligible in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). The claims in *McRO* were directed to the creation of something physical—namely, the display of “lip synchronization and facial expressions” of animated characters on screens for viewing by human eyes. *Id.* at 1313. The claimed improvement was to how the physical display operated (to produce better quality images), unlike (what is present here) a claimed improvement in a mathematical technique with no improved display mechanism. The claims in *McRO* thus were not abstract in the sense that is dispositive here. And those claims also avoided being “abstract” in another sense reflected repeatedly in our cases (based on a contrast not with “physical” but with “concrete”): they had the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it. *McRO*, 837 F.3d at 1314; see *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305–06 (Fed. Cir. 2018); *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016); *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1265 (Fed. Cir. 2016); see also *Two-Way Media*, 874 F.3d at 1337; *Secured Mail Solutions LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 909 (Fed. Cir. 2017); *RecogniCorp*, 855 F.3d at 1326; *Symantec*, 838 F.3d at 1316.

SAP America v. Investpic, 890 F.3d 1016, 1021–1022 (Fed Cir 2018). The *SAP* claims were directed to statistical methods for the analysis of financial data. The instant claims perform data reception and selection to issue a payment debit or credit. As in *SAP*, the instant claims are a claimed improvement in a financial technique, that also passes data back and forth, with no improved display or transmission mechanism and they lack the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it.

Appellant further argues that the asserted claims are akin to the claims found patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014). Reply Br. 5–6. In *DDR Holdings*, the court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *Id.* at 1257. There, the court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *Id.* at 1258. The court cautioned, however, “that not all claims purporting to address Internet-centric challenges are eligible for patent.” *Id.* For example, in *DDR Holdings* the court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramerical*. See *id.* at 1258–59 (citing *Ultramerical*, 772 F.3d 709, 715–16 (Fed. Cir. 2014)). As noted there, the *Ultramerical* claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on

the Internet before.” *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 715–16). Nevertheless, those claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘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.’” *Id.*

Appellant’s asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited “providing [a] media product for sale at an Internet website;” “restricting general public access to said media product;” “receiving from the consumer a request to view [a] sponsor message;” and “if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query.” 772 F.3d at 712. Similarly, Appellant’s asserted claims recite receiving, selecting, analyzing, and transmitting data representing payment. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are not persuaded by Appellant’s argument that the Examiner fails to establish that the claims are directed to a fundamental economic practice long prevalent in our system of commerce. Reply Br. 6–7. Payment processing is by definition as old as payments in market based environments. Appellant contends

the current claims are directed to an innovative approach for facilitating the processing of online purchase transactions via a

computer-based electronic payment processing platform. The claimed approach provides advantages over inflexible legacy systems that are difficult to change, and, therefore, cannot easily be modified to process certain electronic purchase transactions. In particular, the claimed approach improves upon legacy systems by interfacing such legacy systems with various child products via the computer-based electronic payment processing platform.

Id. There is little innovative about receiving, selecting, analyzing, and transmitting data. The claims, while distinguishing a payment processing platform from a financial institution, do not recite interactions between those entities, but only the actions performed at a payment processing platform. More to the point, the steps recited are no more than abstract conceptual advice devoid of technical implementation details. To the extent Appellant contends the very existence of a separate payment processing platform provides an inventive ordered combination, again, simply reciting such a separate entity is an abstract idea. Introducing middlemen for the purpose of making transactions more flexible is part and parcel of the history of generic middlemen even prior to computers, and so simply adding such is both conventional and an abstraction. As we also determine *supra*, none of the claims recite the argued child product.

We are not persuaded by Appellant's argument that

by definition, electronic purchase transactions are performed by a computer and over computer-based electronic purchase processing platforms. The claims are so directed. In particular, the claims, on their face, recite that claimed steps are performed by a payment processing platform or by operation of one or more processors of the payment

processing platform. Accordingly, the claims cannot be interpreted as being directed towards human-based activity.

Reply Br. 8. Appellant conflates the context of the claim with what the claim is directed to. The issue is not whether the claims recite doing something electronically, but whether they recite doing something that was in the past done by human interaction. The history of market economies is more than long enough to take notice of them and their attendant payment processing.

We are not persuaded by Appellant's argument that

The claimed payment processing platform maintains a set of preset rules, where the form of payment is chosen by the payment processing platform based on one of the preset rules. Further, the payment processing platform, being distinct from the financial institution, is able to maintain and apply these preset rules to, for example convert a debit transaction to a credit transaction. These steps add limitations other than what is well-understood, routine, or conventional, thereby amounting to more than any abstract idea.

Reply Br. 9. Applying rules is itself an abstract idea, absent some technological implementation.

IV argues that the claims do not merely require routine and conventional use of computers and the Internet because “applying business rules to email is not what computers and the Internet do in the absence of this claim limitation” and “because computers and the Internet do not have ‘rule engines’ as a matter of course.” . . . But the inquiry is not whether conventional computers already apply, for example, well-known business concepts like hedging or intermediated settlement. Rather, we determine whether “each step does *no more than require* a generic computer to perform generic computer functions.” *Alice*, 134 S. Ct. at 2359 (emphasis added). Here that is the case.

Appeal 2017-002752
Application 13/567,983

Intellectual Ventures I LLC v. Symantec Corp., 838 F.3d 1307, 1318–19
(Fed. Cir.2016)

CONCLUSIONS OF LAW

The rejection of claims 1–5, 7–24, and 26–29 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

DECISION

The rejection of claims 1–5, 7–24, and 26–29 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