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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK M. FLEMING

Appeal 2017-003088
Application 13/454,942
Technology Center 3600

Before ROBERT E. NAPPI, ERIC S. FRAHM, and JOYCE CRAIG, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Introduction

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellant, CoreLogic Solutions, LLC is the real party in interest. App. Br. 3.

Disclosed Invention and Exemplary Claim

The disclosed invention is directed to a method and systems for evaluating property valuation. Abstract. More specifically, the disclosed invention utilizes a physical computing system to access market information and transactional information for a plurality of properties in a market area wherein transactional information can include information indicative of exogenous factors. Spec. ¶¶ 49, 52, Fig. 4. Further, the disclosed invention (i) calculates market statistical information relating to market values of properties, predicted market values for one property, and transactional statistical information (Spec. ¶¶ 50, 51, 53, Fig. 4); and (ii) determines a measure of certainty for the property valuation of one of the properties based on the market and transactional statistical information. Spec. ¶¶ 18–20, 54, Fig. 1. Independent claim 1 is exemplary of the disclosed invention, and reads, with emphasis added, as follows:

> 1. A method for evaluating a property valuation performed by a property evaluator, the method comprising:
>
> accessing, by a physical computing system, market information for a plurality of properties in a market area, the market information comprising one or more of: (i) property-specific factors relating to individual properties in the market area, (ii) locational factors relating to the location of individual properties in the market area, and (iii) market sales factors relating to market dynamics for the plurality of properties;
>
> accessing, by the physical computing system, transactional information for the plurality of properties, the transactional information comprising one or more factors indicative of exogenous influences on the property evaluator, the exogenous influences not including the property-specific factors, the locational factors, or the market sales factors;
>
> calculating, by the physical computing system, based at least in part on the market information, market statistical

information relating to the market values of the plurality of properties;

calculating, by the physical computing system, predicted market values for one or more of the plurality of properties;

calculating, by the physical computing system, based at least in part on the transactional information, the market statistical information, and the predicted market values, transactional statistical information relating to the exogenous influencing factors; and

determining, by the physical computing system, *based at least in part on the market statistical information and the transactional statistical information, a measure of certainty for a property valuation of one of the plurality of properties.*

Examiner's Rejection

The Examiner rejected claims 1–22 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 2–3; Ans. 2.

Principal Issue on Appeal

Based on Appellant's arguments in the Appeal Brief (App. Br. 7–16) and the Reply Brief (Reply Br. 2–11), the following issue is presented on appeal:

Did the Examiner err in rejecting claims 1–22 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter because the claims recite the collection and analyzation of data to indicate certainty in real estate property valuations?[2]

[2] Appellant primarily presents arguments as to method claim 1 (App. Br. 8–13; Reply Br. 2–10), and asserts that independent claims 13 and 19 contain similar features as claim 1. Appellant relies on the arguments presented as

ANALYSIS

We have reviewed the Examiner's rejection (Final Act. 2–9) in light of Appellant's arguments in the briefs that the Examiner has erred (App. Br. 7–16; Reply Br. 2–11), as well as the Examiner's response to Appellant's arguments in the Appeal Brief (Ans. 2–8). We disagree with Appellants' conclusions that claims 1–22 are directed to statutory subject matter. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 2–9), and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to the Appellant's Appeal Brief (Ans. 2–8). We provide the following for emphasis.

Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347 (2014), identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. According to *Alice* step one, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 134 S. Ct. at 2355. For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Alice*, 134 S. Ct. at 2355–57.

"The 'abstract idea' step of the inquiry calls upon us to look at the 'focus of the claimed advance over the prior art' to determine if the claim's

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to claim 1 for the patentability/eligibility of claims 2–22 (*see generally* App. Br. 13–16; Reply Br. 2–11). Therefore, we select claim 1 as representative of the group of claims rejected under 35 U.S.C. § 101, consisting of claims 1–22, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(iv).

'character as a whole' is directed to excluded subject matter." *Affinity Labs of Texas v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). "'In determining the eligibility of [Appellant's] claimed process for patent protection under § 101, their claims must be considered as a whole." *Diamond v. Diehr*, 450 U.S. 175, 188 (1981).

If the claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered "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." *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78–9). For claims to pass muster, "at step two, an inventive concept must be evident in the claims." *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017).

Appellant contends (App. Br. 7–16; Reply Br. 2–11) that the claims are statutory, because (i) the output of claim 1 is a measure of how accurate the property valuation is that a financial entity can use to determine if another valuation is necessary which is a solution in the technological realm of statistical modeling; (ii) claims are not just a computerization of what was normally done by hand but rooted in computer technology; and (iii) the claims do not preempt other methods of performing this valuation.

Appellant contends that the Examiner oversimplifies the features of claim 1 and inaccurately labels claim 1 as a series of mathematical formulations and steps by ignoring limitations in the claim that recite the transactional information comprising factors that indicate exogenous

influences. App. Br. 7–9. Specifically, Appellant recites that when the elements of claim 1 properly considered as a whole, claim 1:

> does not resemble anything that has been found by the courts to represent an abstract idea such as hedging in *Bilski v. Kappos*, 561 U.S. 593 (2010), mitigating settlement risk in financial transactions in *Alice*, a specific mathematical equation recited in the claim (as in *Parker v. Flook*, 437 U.S. 584 (1978)), or the patent-ineligible concepts found in other cases.

App. Br. 10.

In regard to these contentions, the Examiner determines that claim 1 recites an abstract idea wherein the limitations recited in claim 1 of "calculating . . . market statistical information relating to the market values of the plurality of properties," "calculating . . . predicted market values for one or more of the plurality of properties," "calculating . . . transactional statistical information relating to the exogenous influencing factors," and "determining . . . a measure of certainty for a property valuation of one of the plurality of properties" broadly describe a method comprising a series of mathematical steps or equations. Ans. 3. The Examiner further determines that (i) the "accessing" steps recited in claim 1 do not add significantly more, but instead merely recite data gathering and data output steps that are achieved utilizing a generic computer structure and/or instructions to implement the idea on a generic computer, which is further supported by the recitation of the usage of "physical data storage" or a "physical computing system" within claim 1. *See* Ans. 4.

Here, the instant case on appeal concerns accessing market data, calculating a property valuation, and determining a measure of certainty in the valuation— a fundamental economic, commercial, and/or business

practice. And, at least the following decision from our reviewing court has found a similar type of fundamental commercial practice patent ineligible: *Electric Power Group,* 830 F.3d at 1354 (holding that collecting information, analyzing it, and displaying certain results of the collection and analysis is patent ineligible). In this light, Appellant's method of accessing market data, calculating a property valuation, and determining a measure of certainty in the valuation recited in claim 1 on appeal is a commercial practice that is economic and fundamental in nature. In addition, Appellant's Specification (Spec. ¶¶ 18–20) describes (i) how the degree of certainty can be expressed by a confidence interval which is determined by statistical valuation, and (ii) that a Gaussian probability distribution of a two standard deviation on the graph as shown in Figure 1 corresponds to the degree of certainty. This description in the Specification only serves to further demonstrate that the limitations recited in claim 1 are mathematical in nature and, therefore, patent-ineligible.

In view of the foregoing, we conclude that accessing market data, calculating a property valuation, and determining a measure of certainty in the valuation as recited in method claim 1 is a fundamental economic practice and, therefore, constitutes patent-ineligible subject matter. *See Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) ("fundamental economic and conventional business practices are often found to be abstract ideas, even if performed on a computer").

The Examiner also finds, and we agree, claim 1 does not include limitations that are "significantly more" than the abstract idea because the claims do not include an improvement to another technology or technical

field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment. *See* Final Act. 5–8; Ans. 3–5.

Appellant contends (App. Br. 12–13; Reply Br. 7–10), that the claim limitations recite "significantly more" because they are performed by "a physical computing system" (claim 1) or "a computer system in communication with the physical data storage" (as recited in claims 13 and 19). Appellant likens the claims on appeal to those found in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), in that their claims are rooted in computer technology due to the recitation of the physical computing system. App. Br. 12–13. Taking into consideration of all of the recited steps, which include the accessing, calculating, and determining steps, they are recited as only being performed "by a physical computing system" (claim 1). Thus, no more than a general purpose computer is recited in the claims on appeal, and we find that the claims are not directed to an improvement to computer functionality, but to an abstract idea. This is further bolstered by paragraph 22 of Appellant's Specification which describes the computing devices as "general purpose computers." Therefore, Appellant has failed to show that there is *significantly more* recited within the claim as recited.

Appellant's argument (App. Br. 10) that claim 1 "is directed to an important technical advance in the real estate marketplace," and provides "a measure of certainty for a property valuation [e.g., by a real estate appraiser] that estimates how accurate the valuation is," is unpersuasive. As the Examiner determines, and we agree:

> Neither the [A]ppellant's remarks nor the [S]pecification actually teach how the measure of certainty is used to improve the functioning of a computer, computer display device or some other technological device. At best, measure of certainty may only improve the business operations of a financial entity. *See* Brief 11 ("[A] financial entity . . . can use the measure of certainty to determine whether the property valuation is sufficiently accurate . . . or whether another valuation . . . should be ordered."). In *Ultramercial v. Hulu, LLC*[, 772 F.3d 709, 721 (Fed. Cir. 2014)], the Federal Circuit explicitly instructed that such "advances in non-technological disciplines – such as business, law, or the social sciences – simply do not count" when assessing patent eligibility.

Ans. 6.

Appellant presents arguments to dependent claims 9 and 10 for the first time in the Reply Brief (*see* Reply Br. 10), to demonstrate that these dependent claims represent significantly more than just the abstract idea of independent claim 1. However, claims 9 and 10 were not argued separately in the Appeal Brief (*see generally* App. Br. 8–13). Therefore, these arguments, which were presented for the first time in the Reply Brief without a showing good cause, are untimely and will not be considered. *See* 37 C.F.R. § 41.41(b)(2) ("Any argument raised in the reply brief which was not raised in the appeal brief, . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown."). Even if we were to consider the additional limitations of claims 9 and 10, the claims recite no more than calculating known mathematical/statistical formulae (e.g., a weighted variance in claim 9, and a measure of certainty in claim 10) upon the information related to the fundamental economic practice (e.g., market and transactional statistical information in claim 9, and a property valuation and scaled valuation score in claim 10).

Appellant further contends that the claims pose "no risk of preemption of any alleged abstract concept, because others can practice the technology in the prior art, rather than the non-routine and unconventional technology recited in claim 1." App. Br. 12. The Examiner determines, and we agree, that merely alleging that no preemption will occur is not enough to demonstrate eligibility. *See* Ans. 8. Instead, Appellant must demonstrate the abstract idea amounts to something more. As previously discussed above, claim 1 does not include additional elements that qualify as *significantly more* than the identified abstract idea.

Consequently we find the Examiner did not err in rejecting representative claim 1, as well as claims 2–22 grouped therewith, under 35 U.S.C. § 101, as directed to patent-ineligible subject matter.

CONCLUSION

The Examiner did not err in rejecting claims 1–22, as being directed to patent-ineligible subject matter.

DECISION

The Examiner's rejection of claims 1–22 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter 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)(1)(iv).

AFFIRMED