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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SIMON BLYTHE

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Appeal 2017-003176  
Application 13/962,289<sup>1</sup>  
Technology Center 3600

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Before HUBERT C. LORIN, NINA L. MEDLOCK, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Simon Blythe (“Appellant”) seeks our review under 35 U.S.C. § 134 from the rejection of claims 1–4. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

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<sup>1</sup> The Appellant identifies MasterCard International, Inc. as the real party in interest (Br. 2).

### THE INVENTION

The “invention generally relates to financial transaction systems, and more particularly to conducting a financial transaction using a mobile communication device.” (Spec. para. 2).

Claim 1 is representative, and is reproduced below:

1. A mobile communication device comprising:
  - a global positioning system receiver configured to use a global positioning system to determine a current geographic location of the mobile communication device;
  - an interface configured to accept a user-inputted geographic location and configured to accept a user-inputted transaction amount for a financial transaction;
  - a payment module memory configured to automatically initiate the financial transaction instruction over a network with said determined current geographic location being within a particular distance of said user-inputted geographic location; and
  - a communication interface configured, upon the financial transaction having been initiated, to wirelessly transmit authentication details to the network to charge the user-inputted transaction amount against a particular account.

Br. 11 (Claims Appendix).

### THE REJECTION

The following rejection is before us for review:

Claims 1–4 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

## ANALYSIS

*The rejection of claims 1–4 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.*

The Appellant argues these claims as a group. *See* Br. 5–10. We select claim 1 as the representative claim for this group, and the remaining claims 2–4 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (internal quotation marks and citation omitted).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Incorporated*, 566 U.S. 66, 82–84 (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. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., to an abstract idea, 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 the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

Applying the framework in *Alice*, and as the first step of that analysis, the Examiner determined that the claims are directed to the abstract idea of “conducting a payment transaction using mobile devices” (Final Act. 4). According to the Examiner, the claimed invention is similar to claims held ineligible in *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x. 950 (Fed. Cir. 2014), *Digitech Image Technologies, LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014), *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014), and *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988 (Fed. Cir. 2014) (nonprecedential) (Final Act. 3). According to the Examiner, the invention is “a fundamental economic practice” and “a method of organizing human activity” (*Id.*).

Proceeding to the second step of *Alice*, the Examiner determined that “[t]he additional limitations of the claims include a mobile device that contains a global positioning receiver, an interface, a payment module memory, and a communications interface.” (*Id.*). According to the Examiner, these additional limitations “do not affect an improvement to another technology or technical field; [] do not amount to an improvement to the functioning of a computer itself; and [] do not move beyond a general link of the use of an abstract idea to a particular technological environment.” (*Id.* at 3–4). The Examiner also determined that “the additional limitations are merely receiving or transmitting data over a network and receiving, processing, and storing data; both of which have been held to be well-understood, routine and conventional functions.” (*Id.* at 4).

The Appellant contends that the Examiner erred and that claim 1 is not directed to an abstract idea. (Br. 5–7).

We are not persuaded of error in the Examiner’s rejection.

The “directed to” inquiry in the claims applies a stage-one filter to the claims, considered in light of the Specification, based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (Inquiring into “the focus of the claimed advance over the prior art.”).

Here, claim 1 calls for gathering and storing information, and using the information to initiate a financial transaction. Claim 1 recites a mobile communication device comprising: (1) a global positioning system receiver configured to determine a current geographic position, (2) an interface configured to accept user input, (3) a payment module memory configured to initiate a financial transaction, and (4) a communication interface configured to transmit information.

The court in *Enfish* put the question as being “whether the focus of the claims is on [a] specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1335–1336. The court found that the “plain focus of the claims” there was on “an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Id.* at 1336.

“In determining the eligibility of respondents’ claimed process for patent protection under § 101, their claims must be considered as a whole.” *Diamond v. Diehr*, 450 U.S. 175, 188 (1981). The question is whether the claims as a whole “focus on a specific means or method that improves the

relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

In this case, we determine that claim 1, as a whole, is focused on initiating a financial transaction based on a user’s geographic location. We do not see that claim 1 is focused on an improvement to any technology such as an improved global positioning system receiver or an improved payment module memory.

“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 ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); see also *Enfish*, 822 F.3d at 1335, quoted in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016).

In that regard, the Background section of the Specification discusses the problem, which is that “[w]ith cellular technology providing consistent communication capabilities and the use of GPS-based devices becoming more accessible and prevalent, there is a need in the art for techniques for utilizing GPS-based capabilities in financial transactions.” (Spec. para. 5). According to the Specification, the inventors solved that problem by combining “communications aspects of mobile devices with financial transaction system capabilities” to enable “a user to automatically initiate a financial transaction with a merchant upon the user being located in a particular geographic vicinity.” (*Id.* para. 6). In light of the Specification’s

description of the problem and solution, the advance over the prior art by the claimed invention is in initiating a financial transaction based on a user's geographic location.

Given the focus of claim 1 as a whole, in light of the Specification, is on data gathering activities<sup>2</sup> in support of initiating a financial transaction based on a user's geographic location, the claims are properly characterized as being "directed to" initiating a financial transaction based on a user's geographic location. Initiating a financial transaction based on a user's geographic location is an abstract idea. *Cf. Front Row Techs., LLC v. NBA Media Ventures, LLC*, 204 F. Supp. 3d 1190, 1267 (D.N.M. 2016), *aff'd sub nom. Front Row Techs. LLC v. MLB Advanced Media, L.P.*, 697 F. App'x 701 (Fed. Cir. 2017) (claims were "directed to the abstract idea of authorizing handheld devices to receive streaming video based on a user's location"). *See also, Callwave Commc'ns, LLC v. AT & T Mobility*, 207 F. Supp. 3d 405, 412 (D. Del. 2016), *aff'd* 672 F. App'x 995 (Fed. Cir. 2017) ("Requesting and receiving location information is an abstract idea.").

Although not argued, we note that claim 1 additionally calls for the communication interface to "wirelessly transmit authentication details." Nevertheless, transmitting information, including where such information involves authentication details, *per se*, is an abstract idea. *Cf. EasyWeb Innovations, LLC v. Twitter, Inc.*, 2016 WL 1253674 (E.D.N.Y. 2016), *aff'd*, No. 2016-2335 (Fed. Cir. 2017) ("receiving, authenticating, and publishing

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<sup>2</sup> *Cf. Elec. Power Grp., LLC*, 830 F.3d at 1353 (When "[t]he focus of the asserted claims" is "on collecting information, analyzing it, and displaying certain results of the collection and analysis," the claims are directed to an abstract idea.)

data” is an abstract idea.) Also, claims that include authentication steps have been found patent ineligible. *See e.g., Intellectual Ventures I LLC v. J. Crew Group, Inc.*, 703 F. App’x. 991 (Mem.) (Fed. Cir. 2017); *Front Row Technologies LLC v. MLB Advanced Media, L.P.*, 697 F.Appx. 701 (Mem.) (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 1597 (Mem) (2018); *GoDaddy.com LLC v. RPost Communications Limited*, 685 Fed.Appx. 992 (Mem) (Fed. Cir. 2017), *cert. denied*, 138 S.Ct. 568 (2017); *Clarilogic, Inc. v. FormFree Holdings Corporation*, 681 Fed.Appx. 950 (Fed. Cir. 2017).; *Morsa v. Facebook, Inc.*, 622 F. App’x. 915 (Mem.) (Fed. Cir. 2015); and, *Prism Technologies LLC v. T-Mobile USA, Inc.*, 696 F. App’x. 1014 (Fed. Cir. 2017).

Merely combining several abstract ideas (e.g., initiating a financial transaction based on a user’s geographic location and transmitting particular information) does not render the combination any less abstract. *Cf. Shortridge v. Found. Constr. Payroll Serv., LLC*, No. 14-CV-04850-JCS, 2015 WL 1739256, \*11 (N.D. Cal. Apr. 14, 2015), *aff’d*, No. 2015-1898, 2016 WL 3742816 (Fed. Cir. July 13, 2016).

The Appellant contends that the claims are not directed to a fundamental economic practice. According to the Appellant, a “fundamental economic practice” “must be a ‘foundational’ or ‘basic’ concept ‘relating to the economy and commerce.’” (Br. 6). The Appellant contends that “[t]here is nothing ‘foundational’ or ‘basic’ in the use of a mobile communication device that requires a GPS to determine a current location of the device to be used to authenticate and carry-out a wireless financial transaction,” and therefore the claimed invention is not directed to “a fundamental economic practice.” (*Id.*).

The difficulty with the Appellant’s argument is that the category of abstract ideas to which claims may be directed to is not limited to (1) an idea or algorithm of itself, (2) a mathematical formula, or a (3) a fundamental economic practice. “[I]n applying the §101 exception [Laws of nature, natural phenomena, and abstract ideas], we must distinguish between patents that claim the “*“buildin[g] block[s]”*” of human ingenuity and those that integrate the building blocks into something more [Mayo], thereby “transform[ing]” them into a patent-eligible invention [Mayo].” *Alice*, 134 S. Ct. at 2355. (Emphasis added.) “The former ‘would risk disproportionately tying up the use of the underlying’ ideas, *id.*, at — (slip op., at 4), and are therefore ineligible for patent protection.” *Alice*, 134 S. Ct. at 2354–55.

Thus, the abstract idea category of judicially-excepted subject matter broadly covers building blocks of human ingenuity. Like fundamental economic practices, determining one’s location and initiating a financial transaction is such a building block. Whether initiating a financial transaction based on a user’s geographic location is or is not a “fundamental economic practice,” it is nevertheless a concept fairly characterized as a building block of human ingenuity. Initiating a financial transaction based on a user’s geographic location is a fundamental practice of human behavior that, for example, is commonly resorted to as one finds merchants within one’s vicinity and initiates transactions with those merchants. Therefore, like fundamental economic practices, initiating a financial transaction based on a user’s geographic location is an abstract idea.

In view of the above, we see no error in the Examiner’s determination that claim 1 is directed to an abstract idea.

We now turn to the second step of the *Alice* framework: “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 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 US 66, 73 (2012)).

We cannot agree with the Appellant’s contention that the claims before us are similar to the claims held eligible in *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319 (Fed. Cir. 2010). Br. 6–9. According to the Appellant, the claims before us are similar to the claims in *SiRF Tech.* because “it is apparent that the GPS receiver required by the claims of the present invention is integral to it, and without [the GPS receiver] the invention could not be carried out.” *Id.* at 7.

In *SiRF Tech.*, the Federal Circuit determined that the patent claims at issue addressed the problem of “calculating an absolute position of a GPS receiver.” *SiRF Tech.*, 601 F.3d at 1332. The court noted that the patents at issue disclose “a GPS receiver that can calculate its position without having to wait to receive time information from a satellite, thereby allowing the receiver to calculate its position more quickly and even in weak-signal environments.” *Id.* at 1323. In the two patents challenged under section 101, the claims are directed to specific techniques for computing the position of the GPS receiver. The court noted that the claims of a first patent<sup>3</sup> require “‘pseudoranges’ that estimate the distance from ‘the GPS receiver to a plurality of GPS satellites’” and that “[p]seudoranges, which are the

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<sup>3</sup> US 6,417,801 (issued July 9, 2002).

distances or estimated distances between satellites and a GPS receiver, can exist only with respect to a *particular* GPS receiver that receives the satellite signals.” *Id.* at 1332. Regarding a second patent,<sup>4</sup> the court noted that the claims require “the estimation of ‘states’ that are ‘associated with a satellite signal receiver,’ and the formation of a ‘dynamic model . . . to compute [the] position of the satellite signal receiver.’” *Id.* The court determined that the claims of both patents are directed to statutory subject matter because “the methods at issue could not be performed without the use of a GPS receiver; indeed without a GPS receiver it would be impossible to generate pseudoranges or to determine the position of the GPS *receiver* whose position is the precise goal of the claims.” *Id.* In other words, the claims of both patents were determined patent-eligible not simply because the claims require a GPS receiver, but because they are directed to improved techniques for computing the position of the GPS receiver.

No such technological advance is evident in the claimed invention. Unlike the situation in *SiRF Tech*, the Appellant does not identify any improvement to GPS technology. Instead, the Appellant’s claim merely involves the use of “a global positioning system receiver” as a data-gathering tool “to determine a current geographic location of the mobile communication device.” Br. 11, Claims Appendix. Determining a current geographic location of a GPS receiver is precisely the expected manner of operation of a GPS receiver. Nothing in the claim, understood in light of the Specification, requires anything more than a conventional mobile communication device having a conventional GPS receiver. “The

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<sup>4</sup> US 6,937,187 (issued August 30, 2005).

[S]pecification fails to provide any technical details for the tangible components, but instead predominately describes the system and methods in purely functional terms.” *In re TLI Comm. LLC Patent Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016). For example, with respect to the claimed “mobile communication device,” the Appellant’s Specification discloses that “GPS-enabled cell phones are becoming more prevalent in the marketplace.” (Spec. para. 3). Regarding the claimed “communication interface,” the Specification simply discloses that “communication interface 14 preferably includes a particular structure and functionality based upon the type of the device 10.” (*Id.* para. 24). Regarding the claimed “global positioning system receiver” the Appellant’s Specification discloses that “the receiver 12 calculates the distance using low-power radio signals received from the satellites using a technique known as Trilateration, which is known in the art.” (*Id.* para. 28). The Specification does not disclose, for example, a new way of computing the position of the GPS receiver.

The Appellant cites claim 2 of Example 21 of the July 2015 Update Appendix 1 of the 2014 Interim Guidance Matter Eligibility (hereinafter “Example 21”). According to the Appellant, “[t]he inclusion of hardware elements in claim 2, not found in claim 1 [of Example 21], provide ‘significantly more’ than the abstract idea.”

Claim 2 of Example 21 of the July 2015 Update Appendix 1 of the 2014 Interim Guidance Matter Eligibility is not a strong basis for arguing that claim 1 on appeal is patent-eligible.

First, claim 2 of Example 21 is a hypothetical claim, not an actual claim present in US 7,035,914 B1 that was at issue in *Google Inc. v.*

*Simpleair, Inc.*, Covered Business Method Case No. CBM 2014-00170 (Jan. 22, 2015), the Board decision on which hypothetical Example 21 is based.

Second, the Board did not hold a claim like claim 2 of Example 21, or any claim in US 7,035,914 B1 for that matter, patent-eligible as a matter of law. Rather, the Board found that the Petitioner had not “shown sufficiently that claims 1–3, 7, and 22–24 [of US 7,035,914 B1] are more likely than not unpatentable as being directed to patent-ineligible subject matter under 35 U.S.C. § 101.” *Id.* at 16. (“Petitioner’s generalized arguments, not directed to the specific language of the challenged claims, are insufficient to show that the claims more likely than not are directed to a patent-ineligible abstract idea.”)

Third, be that as it may, claim 2 of Example 21 is not comparable to what is claimed. Claim 2 of Example 21 includes the limitation “[an] alert [which] activates [a] stock viewer application to cause the stock quote alert to display on the remote subscriber computer and to enable connection via the URL to the data source over the Internet when the wireless device is locally connected to the remote subscriber computer and the remote subscriber computer comes online.” The Appellant has not explained how claim 1 on appeal contains any comparable limitation.

Fourth, reliance on examples in USPTO guidance is problematic at best. The Board decides cases in accordance with the law, not in accordance with hypothetical “examples [ ] intended to be illustrative only” (page 1 of July 2015 Update).

To the extent that the Appellant suggests that the “inclusion of hardware elements” in a claim is the governing test under the second step of the *Alice* framework, the Appellant misapprehends the applicable law.

Indeed, “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal citations and quotation marks omitted).

We have fully considered the Appellant’s arguments. For the foregoing reasons, they are unpersuasive as to error in the rejection of claim 1, and claims 2–4, which fall with claim 1.

The rejection is sustained.

#### CONCLUSIONS

The Appellant has not shown that the Examiner erred in rejecting claims 1–4 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

#### DECISION

The decision of the Examiner to reject claims 1–4 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).

AFFIRMED