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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIK S. CRAWFORD and THOMAS B. SAYOR

Appeal 2017-003264
Application 10/969,767
Technology Center 3600

Before TERRENCE W. McMILLIN, KARA L. SZPONDOWSKI, and SCOTT B. HOWARD, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C § 134(a) of the Final Rejection of claims 13–17, 26, and 30–43, all claims currently pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM and ENTER A NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b).

STATEMENT OF THE CASE

Appellants'[1] invention is directed to "system and methods for more easily paying bills, such as utility bills, by a consumer using point-of-sale systems." Spec. ¶ 4. Claim 13, reproduced below with the disputed limitations in *italics*, is representative of the claimed subject matter:

> 13. A method of facilitating bill payments by a customer, the method comprising:
>
> registering a customer by a computer system to create a customer account;
>
> receiving, by the computer system into a database associated with the computer system, a plurality of bill information associated with the customer account, the bill information associated with a plurality of vendors, where at least one of the plurality of bill information comprises information associated with a purchase made at a first point of sale terminal;
>
> calculating, by the computer system, a total amount owed by the customer from the plurality of bill information;
>
> *providing, by the computer system, the customer with a paper billing statement which includes a magnetic strip containing data indicating the total amount and a transaction identifier associated with the total amount*;
>
> calculating, by the computer system, based on the plurality of bill information, a pay date for a payment of the total amount owed by the customer, wherein the calculated pay date is an earliest due date associated with the plurality of bill information;
>
> subsequent to providing the customer with the total amount and the transaction identifier, receiving from a second point of sale terminal, by the computer system into the database associated with the computer system, a payment record, the payment record including the transaction identifier received by

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[1] According to Appellants, The Western Union Company of Englewood, Colorado, is the real party in interest. App. Br. 2.

> the second point of sale terminal reading the magnetic strip of the paper billing statement, and the payment record further including at least a portion of the total amount associated with the transaction identifier previously provided to the customer, the payment record having been generated in conjunction with a payment made by the customer at the second point of sale terminal;
>
> apportioning, by the computer system, the payment amount among the plurality of vendors in accordance with the plurality of bill information;
>
> transferring, by the computer system, to each of the plurality of vendors an amount received for each respective vendor associated with the customer; and
>
> transmitting, by the computer system to the vendors, an indication that the customer is the source of the transmitted funds.

REJECTIONS

Claims 13–17, 26, and 30–43 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception without significantly more.[2] Ans. 14.

Claims 13–16, 26, 30, 31, 34, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kissner et al. (US 2005/0137948 A1; published June 23, 2005) ("Kissner") and Meyer et al. (US 2002/0077976 A1; published June 20, 2002) ("Meyer").[3] Ans. 3.

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[2] The Examiner's statement of rejection incorrectly lists claims 1–13, 17, and 26–43, but pending claims should be correctly listed as claims 13–17, 26, and 30–43.

[3] The Examiner's statement of rejection incorrectly omits claims 30 and 31, which are rejected in the body of the rejection, and the statement of the rejection should be correctly listed as claims 13–16, 26, 30, 31, 34, and 35.

Claims 17, 32, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kissner, Meyer, and Antognini et al. (US 2002/0023055 A1; published Feb. 21, 2002) ("Antognini"). Ans. 10.

Claims 36–43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kissner, Meyer, and Siegel et al. (US 2002/0082931 A1; published June 27, 2002) ("Siegel"). Ans. 11.

ANALYSIS

35 U.S.C. § 101 Rejection

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 35 U.S.C. § 101. In the first step, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept." *Alice*, 134 S. Ct. at 2355.

The Examiner determines the claims are directed to "performing a bill payment," which is "a fundamental economic practice" and, thereby, an abstract idea. Final Act. 5.

Appellants argue the Examiner has oversimplified the claims, has not properly addressed the entirety of the claims, and, therefore, failed to adequately explain why the claims are an "abstract idea." App. Br. 7–9. Specifically, Appellants argue that, unlike in *Alice*, the claimed invention "is far from such a basic concept" as "intermediated settlement." App. Br. 10–11. Appellants contend the claimed invention, similar to the claims in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), "are not directed simply to performing bill payments, but recite *specific* mechanisms of facilitating bill payments involving a customer computer system, a first point of sale (POS) terminal associated with a purchase, and a second POS terminal used to pay the bill." Reply Br. 4.

We are not persuaded by Appellants' arguments and find the Examiner set forth the statutory basis of the rejection in a sufficiently informative manner as to meet the notice requirement of 35 U.S.C. § 132. *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (holding that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132). We agree with the Examiner's determination that the claims are directed to the fundamental economic practice of performing a bill payment. *See* Final Act. 5; *see*, *e.g.*, *Inventor Holdings, LLC v. Bed Bath & Beyond Inc.*, 123 F. Supp. 3d 557, 561 (D. Del. 2015), *aff'd*, 643 F. App'x 1014 (Fed. Cir. 2016) (Mem) ("Following the guidance of *Alice* and its progeny, the court finds that the concept of local processing of payments for remotely purchased goods is an abstract idea . . . this concept qualifies as 'longstanding commercial practice' and a 'method of organizing human activity.' *See Alice*, 134 S. Ct. at 2356–57").

In *Enfish*, the Court held "describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule." *Enfish*, 822 F.3d at 1337–38. Here, we find the Examiner has not described the claims in a way untethered from the language of the claims. *See* Final Act. 3–4. The claimed invention is directed to "facilitating bill payments" by providing customers with billing statements that contain transaction information (i.e., transaction identifier, total amount due, date due) and enabling the customers to provide payment at point of sale terminals to vendors indicated in the billing statement. Appellants have not persuasively explained why the claims are not directed to an abstract idea.

In the second step of the *Alice* analysis, we "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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Serv. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). 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.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Examiner further determines the additional elements in the claims do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself. Ans. 16–19. Specifically, the Examiner determines that the claimed invention utilizes generic computer components performing basic functions of storing, retrieving, processing, and displaying data through the program that enables execution of the abstract ideas. Ans. 16. According to the Examiner, "[n]othing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information." Ans. 18. The Examiner finds the claimed computer components perform purely generic computer functions. Ans. 16. The Examiner further finds the claimed invention does not improve upon an existing prior art system, and instead advances "a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions." Ans. 19.

Appellants argue the claimed invention "overcome[s] the problems of conventional bill payments by mail via check or money orders, and the problems of various electronic bill payment services" by "facilitating bill payment to multiple different vendors from a single point of sale (POS) terminal of a merchant during a customer purchase." App. Br. 13; *see id.* at 14. According to Appellants, the claimed invention "reflect[s] a clear improvement to the relevant technology and . . . [is] an improvement to the functioning of the computer devices involved." *App. Br.* 14. Appellants contend the claimed "operations, taken together, recite a specially programmed and designed device having features that are beyond 'what is well understood, and conventional,' which qualifies as significantly more than an abstract idea." *Id.* According to Appellants, the claimed computerized operations using the claimed computer components (i.e., computer system, first POS terminal, second POS terminal, vendor systems) are not a "computer network operating in its normal, expected manner." *Id.* at 14–15 (citing *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245 (Fed. Cir. 2014)).

We are not persuaded by Appellants' argument and agree with the Examiner's findings and conclusions. *See* Final Act. 3–5; Ans. 16–20. Appellants have not adequately explained how or provided persuasive evidence to show why the claims add meaningful limits to practicing the abstract idea.

We agree with the Examiner that the claims do not improve another technology or technical field, or functioning of the computer itself, and do not have meaningful limitations beyond generally linking use of an abstract idea to a technological environment. *See* Ans. 16–19. Rather than reciting additional elements that amount to "significantly more" than the abstract idea, the pending claims generically recite computer systems with host and vendor computers. *See* Spec. ¶ 18. These computers describe generic computers and functions and do not satisfy the inventive concept. *See, e.g.*, *DDR Holdings*, 773 F.3d at 1256 ("[A]fter *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" (internal citation and internal quotation marks omitted)).

Moreover, we disagree with Appellants that the claims in this case are directed to a computer-centric problem or improves technology or computer operations. In *DDR*, the Court found that the claims "do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR*, 773 F.3d at 1257. Unlike the claims in *DDR*, the claimed invention in this case does not improve computers as tools, but rather improves independently abstract ideas that use computers as tools. *See* Ans. 19 (the claimed invention advances "a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions").

The additionally claimed elements of a first point of sale terminal and a second point of sale terminal do not amount to "significantly more" than the abstract idea. A point of sale device "may comprise, for example, a point-of-sale terminal 110 in a store location, physically or wirelessly coupled with host computer 120," which "comprises a server, a computer, or the like." Spec. ¶ 18. These point of sale terminals, which are claimed to provide information associated with purchases and payments made at the terminals, are merely functioning as conventional point of sale terminals. *See* Spec. ¶ 3 ("a variety of electronic bill payment services have become available," including "service that permits utility bills to be paid at an agent location" by collecting the money at the location and "enter[ing] the account information from the bill statement into a terminal, and then mak[ing] the payment electronically").

This case is similar to *Electric Power*, in which our reviewing court found the claims patent-ineligible because "[t]he claims at issue do not require any nonconventional computer, network, or display components, or even a 'non-conventional and non-generic arrangement of known, conventional pieces,' but merely call for performance of the claimed information collection, analysis, and display functions 'on a set of generic computer components' and display devices." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)). Similarly, the claims in this case merely recite using computers as tools while collecting information (i.e., the claimed receiving billing information associated with a purchase at a first point of sale, and receiving payment record information in conjunction with a payment made), analyzing information (i.e., the claimed calculating total amount owed by the customer and earliest due date from the billing information, and apportioning payment amount to each of the vendors according to the billing information), and providing certain results (i.e., the claimed providing a paper billing statement indicating the billing data, and transferring payment funds to vendors while indicating the customer is the source of the funds).

To the extent Appellants rely on a lack of prior art (*see* App. Br. 13), Appellants misapprehend controlling precedent. Although the second step in the *Alice* framework is termed a search for an "inventive concept," the analysis is not an evaluation of novelty or non-obviousness. *Alice*, 134 S. Ct. at 2355. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. 66 at 78–79. Further, "under the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility." *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016).

With regard to Appellants' preemption argument (*see* App. Br. 15), although the extent of preemption is a consideration, the absence of complete preemption is not dispositive. *See, e.g., Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) ("While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility"); *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1346 (Fed. Cir. 2013) ("[T]he Supreme Court has stated that, even if a claim does not wholly pre-empt an abstract idea, it still will not be limited meaningfully if it contains only insignificant or token pre- or post-solution activity—such as identifying a relevant audience, a category of use, field of use, or technological environment") (internal citations omitted), *vacated and remanded*, *WildTangent, Inc. v. Ultramercial, LLC*, 134 S. Ct. 2870 (2014) (remanding for consideration in light of *Alice*, 134 S. Ct. 2347). Accordingly, even if the claims do not preempt the abstract idea, that alone is not enough to render the claims patent-eligible.

The claims, when viewed as a whole, perform conventional processing functions (receiving, analyzing, and displaying data) that courts have routinely found insignificant to transform an abstract idea into a patent-eligible invention. As such, the claims amount to nothing significantly more than an instruction to implement the abstract idea on a generic computer — which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Accordingly, we sustain the Examiner's 35 U.S.C. § 101 rejection of claims 13–17, 26, and 30–43.

35 U.S.C. § 103(a) Rejections

Claims 13–17, 30, 32, 34, and 36–39

Issue: Did the Examiner err in finding the combination of Kissner and Meyer teaches or suggests "providing, by the computer system, the customer with a paper billing statement which includes a magnetic strip containing data indicating the total amount and a transaction identifier associated with the total amount," as recited in independent claim 13?

Appellants contend none of the cited portions of Kissner or Meyer teaches "a magnetic strip [within a billing statement] containing data indicating the total amount and a transaction identifier associated with the total amount," as recited in claim 13. Reply Br. 2 (citing Meyer ¶¶ 79, 127). Specifically, Appellants argue Kissner's printed Anoto pattern is a printed dot pattern that is not the same as or equivalent to a "magnetic strip containing data indicating the total amount and a transaction identifier associated with the total amount." App. Br. 16 (citing Kissner ¶ 81).

As cited by the Examiner (Adv. Act. 2), Kissner teaches "the bill is *printed using only generic Anoto pattern* and *includes a traceable code* that is used by the consumer to *identify the particular bill*." Kissner ¶ 81 (emphasis added). As further cited by the Examiner (Ans. 2), Meyer teaches "[t]o pay the bill, the customer **503** takes the *bar-coded invoice* to a participating store (e.g.[,] a supermarket) that processes bill payments. The customer presents his *bar-coded* bill remittance stub to the checkout cashier for *scanning at the checkout scanner* **504**." Meyer ¶ 52 (emphasis added). Meyer further teaches "the *scanner* **504** picks up the bill payment *bar code* that *identifies the biller to be paid and the account number to be credited*." *Id.* (emphasis added). In other words, Kissner teaches using an *Anoto pattern* containing transaction information on a billing statement, and Meyer teaches scanning a *bar-code* containing transaction information on a billing statement.

We agree with Appellants that Kissner and Meyer fail to teach a billing statement that includes data indicating the total amount and a transaction identifier in *a magnetic strip*. In both Kissner and Meyer, the code on the billing statement is scanned optically (i.e., an Anoto pattern, as a printed dot pattern, and UPC are scanned optically). Both Kissner and

Meyer are silent to using a magnetic strip (i.e., scanned magnetically) instead of optically scanned patterns to contain transaction information.

However, Appellants' Specification describes "some or all of the customer identification and payment amount information is maintained on billing statement 170, such as in a Universal Product Code (UPC) 174," and *alternatively* "a magnetic strip may be provided on billing statement 170 having appropriate information." Spec. ¶ 24. According to Appellants' Specification, "[i]nformation maintained in UPC 174, the magnetic strip, written or printed on billing statement 170, or the like, may include the customer identification, the payment amount due (a minimum amount and/or a total amount), vendor information, and the like." *Id.* Therefore, as recognized by Appellants, UPC and a magnetic strip are both known ways to maintain print transaction information on a billing statement.

"[T]he simple substitution of one known element for another" generally will be obvious unless the substitution or the application of the known technique would have been beyond the level of ordinary skill in the art, or the results of the substitution would not have been predictable by one of ordinary skill in the art. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416–17 (2007). "[T]he [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 418. We conclude that the use of a known in the art magnetic strip in place of Meyer's bar code would have been obvious as mere substitution of one element for another known in the field. It would not have been "uniquely challenging or difficult for one of ordinary skill in the art" to maintain transaction information in Meyer in a magnetic strip rather than in a bar-code. *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 419).

Accordingly, we sustain the rejection of independent claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Kissner and Meyer. However, because our reasoning differs from that of the Examiner, we designate our affirmance of the rejection as a new ground of rejection.

Appellants do not present arguments for separate patentability of dependent claims 14–17, 30, 32, 34, and 36–39, which fall with claim 13. Accordingly, we sustain the rejections of claims 13–17, 30, 32, 34, and 36–39 under § 103(a), and designate our affirmance of the rejections as new grounds of rejection.

Claims 26, 31, 33, 35, and 40–42

Issue: Did the Examiner err in in finding that the combination of Kissner and Meyer teaches or suggests

> *provide* the customer with *a paper billing statement having a tear away portion which includes a magnetic strip* containing data indicating the total amount and a transaction identifier associated with the total amount, *wherein the tear away portion may be presented at a second point of sale terminal so that the first vendor associated with the purchase made at the first point of sale terminal is not revealed to a second vendor associated with the second point of sale terminal*,

as recited in independent claim 26 (emphasis added)?

The Examiner relies on Meyer's encryption and digital certification for data providing security to data during transfer, including security means such as a magnetic physical key, to teach presenting the tear away portion of the billing statement including the magnetic strip to a second point of sale terminal "so that the first vendor associated with the purchase made at the first point of sale terminal is not revealed to a second vendor associated with the second point of sale terminal." Ans. 20 (citing Meyer ¶ 127).

Appellants contend Meyer only teaches security measures for data transfers, but does not teach presenting the tear away portion of the billing statement so that the first vendor is not revealed to the second vendor. App. Br. 18.

We are persuaded by Appellants' arguments. As Appellants point out (App. Br. 18), Meyer teaches "one- or two-way data encryption and/or digital certification for data being input and output, to provide security to data during transfer . . . may comprise security means in the including one or more of the following . . . magnetic or other physical key device." Meyer ¶ 127.

We find the Examiner has *not* provided sufficient findings that Meyer's *broad provision* of "security to data during transfer" necessarily teaches or suggests the claimed presenting the billing statement *such that the first vendor is not revealed to the second vendor.*

Accordingly, we are constrained on the record before us to reverse the Examiner's § 103(a) rejection of independent claim 26, along with the § 103(a) rejections of dependent claims 31, 33, 35, and 40–42.

Claim 43

Issue: Did the Examiner err in in finding that the combination of Kissner and Meyer teaches or suggests

> *determine from the transaction identifier that the first vendor is an authorized vendor in a group of authorized vendors which include the first vendor and the second vendor;*
> *transmit an approval to the second point of sale terminal upon determining that the first vendor is an authorized vendor*, for display of an approval at the second point of sale terminal of such authorization,

as recited in independent claim 43 (emphasis added)?

The Examiner relies on Meyer's assigned biller identification number that is distributed to teach the claimed determining the first vendor is an authorized vendor in a group of authorized vendors. Ans. 21 (citing Meyer ¶ 79).

Appellants contend Meyer only teaches assigning and distributing biller identification numbers to different billers, but does not teach determining from the transaction identifier that the first vendor is an authorized vendor in a group of authorized vendors. App. Br. 18–19.

We are persuaded by Appellants' arguments. As Appellants point out (App. Br. 18), Meyer describes that an "assigned biller identification number is acquired or distributed from a central registry authority." Meyer ¶ 79. Meyer merely teaches an identification number being assigned to the biller from a central registry, but is silent to making *any determinations about the first vendor* or that *assigning an identification number indicates a vendor is an authorized vendor from a group of authorized vendors*.

We find the Examiner has *not* provided sufficient findings that Meyer's assigned biller identification number (e.g., transaction identifier assigned) teaches or suggests the claimed determining, "from the transaction identifier[,] that the first vendor is an authorized vendor in a group of authorized vendors."

Accordingly, we are constrained on the record before us to reverse the Examiner's § 103(a) rejection of independent claim 43.

DECISION

The Examiner's rejection of claims 13–17, 26, and 30–43 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejections of claims 13–17, 30, 32, 34, and 36–39 under 35 U.S.C. § 103(a) are affirmed. We designate our affirmance of the rejections of claims 13–17, 30, 32, 34, and 36–39 as NEW GROUNDS OF REJECTION so as to provide Appellants with a full and fair opportunity to respond to the thrust of the rejection.

The Examiner's rejections of claims 26, 31, 33, 35, and 40–43 under 35 U.S.C. § 103(a) are reversed.

This decision contains a new ground of rejection of claim 13 pursuant to 37 C.F.R. § 41.50(b) (2011). Section 41.50(b) provides that "[a] new ground of rejection . . . shall not be considered final for judicial review."

Section 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .
>
> (2) *Request rehearing.* Request that the proceeding be

reheard under §41.52 by the Board upon the same record.

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; 37 C.F.R. § 41.50(b)