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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD CHADWICK WAGNER

Appeal 2017-003310
Application 13/558,333[1]
Technology Center 3600

Before ALLEN R. MACDONALD, BETH Z. SHAW, and NABEEL U. KHAN, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's Final Office Action rejecting claims 12–16 and 22–28, all of which are pending on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

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[1] According to Appellant, the real party in interest is Prevedere, Inc. Br. 2.
[2] Our Decision refers to the Specification ("Spec."); Appeal Brief filed March 11, 2016 ("Br."); Examiner's Answer mailed July 15, 2016 ("Ans."); and Final Office Action mailed January 8, 2015 ("Final Act.").

RELATED APPEALS

This appeal is related to Appeal No. 2017-002669 in Application No. 14/102,142.

STATEMENT OF THE CASE

Appellant's invention relates to systems and methods for analyzing econometric data. Spec. p.1, ll. 10–14.

Claim 12 is illustrative of Appellant's invention, as reproduced below:

> 12. A method of identifying economic indicators for use in business forecasting comprising:
>
> a) retrieving at an application server from an internal data source via an aggregation server a first econometric data series selected from a collection of internal econometric data series wherein each of the internal econometric data series comprises i) a time domain having a plurality of time values, and ii) a value domain having econometric data values for each of the time values in the plurality of time values;
>
> b) retrieving at the application server from an external data source via the aggregation server a second econometric data series selected from a collection of forecasted econometric data series wherein each of the forecasted econometric data series comprises i) a time domain having a plurality of historic time values and a plurality of future time values, and ii) a value domain having actual econometric data values for each of the time values in the plurality of historic time values and forecasted econometric data values for each of the time values in the plurality of future time values;
>
> c) transmitting the first and second economic data series from the application server for display on a graphical display in a chart comprising:
>
> the first econometric data series plotted on the chart in a first position;
>
> the second econometric data series plotted on the chart; and
>
> a time domain shifting control for transposing the time domain of the first econometric data series;
>
> d) receiving a shift magnitude and a shift direction at the time domain shifting control displayed on the graphical display;
>
> e) replotting the first econometric data series in the chart in a second position by transposing the time domain of the first econometric data series by the shift magnitude and shift direction;

f) displaying on the graphical display one or more of a leading, lagging, cyclic, countercyclic, procyclic or acyclic relationship between the first and second econometric data series based on the shift magnitude and shift direction; and

g) replotting the first econometric data series in the chart in a third position wherein the time domain of the first econometric data series further comprises a plurality of future time values corresponding to the plurality of future time values of the time domain of the second econometric data series, and wherein the value domain of the first econometric data series further comprises forecasted econometric data values for each of the time values in the plurality of future time values, wherein the forecasted econometric data values of the value domain of the first econometric data series are derived from:

the displayed one or more of a leading, lagging, cyclic, countercyclic, procyclic or acyclic relationship between the first and second econometric data series; and

the forecasted econometric data values of the value domain of the second econometric data series.

(Br., Claims App'x, 18–19.)

REJECTION

Claims 12–16 and 22–28 stand rejected under 35 U.S.C. § 101. Final Act. 8–9; Ans. 2.

ANALYSIS

The Examiner finds claims 12–16 and 22–28 are directed to ideas that have been identified as abstract by our reviewing court. Final Act. 8. In particular, the Examiner finds that the abstract idea underlying these claims is "a method for user control of plotted data." Final Act. 8; Ans. 3. The Examiner also finds additional elements recited in these claims do not amount to significantly more than the abstract idea itself. *Id.* According to the Examiner, the claims require no more than a generic computer device. Final Act. 8–9; Ans. 4–6.

Appellant presents several arguments against the 35 U.S.C. § 101 rejection. Br. 11–21. Appellant contends the claims are not directed to an abstract idea and that the claims amount to significantly more than the abstract idea alleged by the Examiner. Br. 4–11.

We do not find Appellant's arguments persuasive. Instead, we find the Examiner has provided a comprehensive response to Appellant's arguments supported by a preponderance of evidence. Ans. 2–12. As such, we adopt the Examiner's findings and explanations provided therein. *Id.* At the outset, we note the Supreme Court has long held that "[l]aws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). The "'abstract ideas' category embodies 'the longstanding rule that '[a]n idea, by itself, is not patentable.'" *Id.* at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.*

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible

application." *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297). In other words, the second step is to "search for an 'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (alteration in original) (quoting *Mayo*, 132 S. Ct. at 1294). The prohibition against patenting an abstract idea "cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or adding 'insignificant postsolution activity.'" *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

Turning to the first step of the *Alice* inquiry, we agree with the Examiner that Appellant's claims are directed to an abstract idea of "user control of plotted data." Ans. 3–4. All the steps recited in Appellant's claims, including, for example: (i) "retrieving," (ii) "transmitting the first and second economic data series," and (iii) "replotting the first economic data series" are abstract processes of retrieving, transmitting, and plotting data.

Turning to the second step of the *Alice* inquiry, we find nothing in Appellant's claims that adds anything "significantly more" to transform them into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. The claimed steps are ordinary steps in data analysis and are recited in an ordinary order.

For at least the reasons stated in the Answer, we are not persuaded by Appellant's unsupported attorney argument that there is a "transformation of the data claimed" or that a "particular machine" is required by the claims. Br. 14. Rather, none of the hardware recited by the claims "offers a meaningful limitation beyond generally linking 'the use of the [method] to a

particular technological environment,' that is, implementation via computers." *Alice* 134 S. Ct. at 2360 (quoting *Bilski*, 561 U. S. at 610–11). As the Examiner explains, and Appellant does not rebut, the Specification only discusses conventional and generic servers. Ans. 5 (citing Spec. pp. 10–11; Figs. 1, 1B). Additionally, as the Examiner explains, no data is "transformed" by the claims; but rather, merely displayed, plotted, or replotted as part of a chart on a screen. *Id.*

Limiting an abstract concept of plotted data to a general purpose computer having generic components, such as the "application server" recited in Appellant's claims, does not make the abstract concept patent-eligible under 35 U.S.C. § 101. As recognized by the Supreme Court, "the mere recitation of a generic computer cannot transform a patent ineligible abstract idea into a patent-eligible invention." *Alice*, 134 S. Ct. at 2358; *see id.* at 2359 (concluding claims "simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer" are not patent eligible); *see also Ultramercial*, 772 F.3d at 715–16 (claims merely reciting abstract idea of using advertising as currency as applied to particular technological environment of the Internet are not patent eligible); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (claims reciting "generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer" are not patent eligible); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) ("[s]imply adding a 'computer aided' limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible").

The claims are neither rooted in computer technology as outlined in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), nor do they seek to improve any type of computer capabilities, such as a "self-referential table for a computer database" outlined in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). "[M]erely 'configur[ing]' [a] generic computer[] in order to 'supplant and enhance' an otherwise abstract manual process is precisely the sort of invention that the *Alice* Court deemed ineligible for patenting." *See Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1056 (Fed. Cir. 2017 (alteration in original)).

With regard to Appellant's argument that the pending claims are patent eligible because there are no obviousness or novelty rejections of the claims, (*see* Br. 15), Appellant improperly conflates the requirements for eligible subject matter (§ 101) with the independent requirements of novelty (§ 102) and non-obviousness (§ 103). "The 'novelty' of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter." *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (stating that, "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").

Because Appellant's claims are directed to a patent-ineligible abstract concept and do not recite something "significantly more" under the second prong of the *Alice* analysis, we sustain the Examiner's rejection of these

claims under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice* and its progeny.

CONCLUSION

On the record before us, we conclude Appellant has not demonstrated the Examiner erred in rejecting claims 12–16 and 22–28 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's rejection of claims 12–16 and 22–28.

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