



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/321,990	07/02/2014	Ralph L. Roberts	23189-97	1593
24256	7590	09/22/2017	EXAMINER	
DINSMORE & SHOHL LLP 255 East Fifth Street, Suite 1900 CINCINNATI, OH 45202			SHAAWAT, MUSSA A	
			ART UNIT	PAPER NUMBER
			3665	
			MAIL DATE	DELIVERY MODE
			09/22/2017	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RALPH L. ROBERTS and
STEVE F. NAGHSHINEH

Appeal 2017-003643
Application 14/321,990
Technology Center 3600

Before JOSEPH L. DIXON, ERIC S. FRAHM, and LARRY J. HUME,
Administrative Patent Judges.

FRAHM, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's non-Final Rejection of claims 13–29, 31–37, and 39–41. Office Act. mailed July 7, 2015. Claims 1–12, 30, and 38 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Independent claims 13 (method) and 27 (system with a processor, memory, and executable instructions on the processor for performing the method) are directed to receiving wireless signals representing shipping documentation data from a mobile transmitter at a remote processor, and generating a loading manifest using the shipping documentation data. Independent claims 21 (method) and 35 (system with a processor, memory, and executable instructions on the processor for performing the method) are directed to receiving wireless signals representing shipping documentation data from a mobile transmitter at a remote processor, extracting billing information from the received shipping documentation data, and then inputting the extracted billing information into billing and accounting software. Claims 13 and 21, reproduced below, are illustrative of the claimed subject matter:

13. A method for processing shipping documentation data sent from the vicinity of a vehicle to a remote processor, the method comprising:

receiving at the remote processor, one or more wireless signals from a mobile data transmission device representing shipping documentation data associated with cargo of the vehicle; and

generating a loading manifest utilizing the shipping documentation data while the cargo is enroute to a location,

wherein the loading manifest provides information for further transport of at least a portion of the cargo on another vehicle,
wherein the remote processor performs the acts of receiving the wireless signals and generating the loading manifest.

21. A method for processing shipping documentation data sent from the vicinity of a vehicle to a remote processor, the method comprising:

receiving by the remote processor, one or more wireless signals from a mobile data transmission device representing shipping documentation data associated with cargo of the vehicle;

while the cargo is enroute to a location, extracting billing information from the received shipping documentation data, wherein the billing information is-based at least in part on the shipping documentation data; and

while the cargo is enroute to the location, inputting the extracted billing information into a billing and accounting software package.

REFERENCES and REJECTIONS

The Examiner made the following rejections:

(1) Claims 13–29, 31–37, and 39–41 are rejected under 35 U.S.C.

§ 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Office Act. 2–3; Ans. 2–5. Specifically, the Examiner determines the claims are directed to the abstract idea of processing a shipping document at a remote facility (Office Act. 3; Ans. 5), and the additional claimed elements in the claims are generic computer structure and/or instructions to implement the idea on a generic computer (a remote processor capable of receiving wireless signals and a mobile transmission device). Office Act. 3–4; Ans. 4–5.

(2) Claims 21–26, 35, 37, and 39–41 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over N & M Transfer, pp. PR00002198–2213 (May 5, 1992), in view of Official Notice.¹ Office Act. 3–6; Ans. 6–8. Specifically, the Examiner determines that N & M Transfer (PR00002207) teaches all of the recited subject matter of independent claims 21 and 35, including a remote processor receives wireless signals and performs a method for processing shipping documentation data sent from the vicinity of a vehicle and generating billing information based on the shipping documentation data, except for specifically teaching extracting billing information from the shipping documentation data and inputting the billing information into accounting and billing software. Office Act. 4. The Examiner takes Official Notice that “extracting billing information from the received shipping documentation data and inputting the billing information into an accounting and billing software is old and well known in the art” at the time of Appellants’ invention. Office Act. 4. The Examiner also provides Storch (US 5,920,846; issued July 6, 1999) as evidence to support the Official Notice. Office Act. 4 (citing Storch col. 37, ll. 25–55).

ISSUES

Based on Appellants’ arguments in the Appeal Brief (App. Br. 11–35), the following two issues are presented on appeal:²

¹ The Examiner first took the Official Notice in the Final Rejection, mailed February 6, 2015.

² Appellants present two major groups of argument with regard to the rejection under 35 U.S.C. § 101 as to (1) independent claims 13 and 27 (Br. 13–21); and (2) independent claims 21 and 35 (Br. 21–29). Claims 13 and 21 recite similar methods and subject matter, namely that of a system with a processor, memory, and executable instructions on the processor for performing a method of processing shipping documentation data sent from

(1) Did the Examiner err in rejecting claims 13–29, 31–37, and 39–41 under 35 U.S.C. § 101 because the claimed inventions recited in representative claims 13 and 21 are directed to abstract ideas without significantly more than the abstract idea?

(2) Did the Examiner err in rejecting claims 21–26, 35, 37, and 39–41 under 35 U.S.C. § 103(a) over the combination of N & M and Official Notice because the combination fails to teach or suggest the methods for processing shipping documentation data, as recited in independent claims 21 and 35?

ANALYSIS

35 U.S.C. § 101 Non-Statutory Subject Matter

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).

the vicinity of a vehicle to a remote processor; and claims 27 and 35 recite similar systems and subject matter, namely that of a remote processing system for processing shipping documentation data sent from the vicinity of a vehicle to a remote processor having a processor, memory, and executable instructions on the processor for processing the shipping documentation data. Claims 13 and 27 recite similar subject matter relating to preparing a loading manifest, and claims 21 and 35 recited similar subject matter relating to receiving shipping documentation data and using that data to prepare/generate a billing document (claim 13) or billing information (claim 35). In view of the foregoing, we select claims 13 and 21 as representative of the group of claims rejected under 35 U.S.C. § 101.

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (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 Corp.*, 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.*), e.g., to an abstract idea. 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. *Id.* at 2355–57. 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).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.

We have considered all of Appellants’ arguments (Br. 12–30), but find them unpersuasive as to error in the rejection for at least the following reasons.

Alice Step One

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. Here, in rejecting the claims under 35 U.S.C. § 101, the Examiner finds, and we agree, that claims 13 and 21 are directed to the abstract ideas of processing shipping documentation data at a remote location (Office Act. 3; Ans. 5).

Examining earlier cases can have a role, especially in deciding whether a concept that claims are found to be directed to is an abstract idea. *See Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“Instead of a definition [for what an ‘abstract idea’ encompasses], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”). Here, the instant case concerns analyzing and displaying data to indicate real estate market growth — a fundamental economic, commercial, and/or business practice.

And, at least the following decisions from our reviewing court have found many similar types of fundamental commercial practices related to shipping and shipping documentation data to be patent ineligible: *Macropoint, LLC v. Fourkites, Inc.*, 671 Fed. Appx. 780 (mem.) (Fed. Cir. 2016) (mem.) (affirming the district court’s determination that tracking freight is an abstract idea that is patent ineligible); *Concaten, Inc. v.*

AmeriTrak Fleet Solutions, LLC, 669 Fed. Appx. 571 (Mem.) (Fed. Cir. 2016) (mem.) (cert. denied) (2017) (collecting information from a vehicle and transmitting that information over a network is an abstract idea that is patent ineligible); *Wireless Media Innovations, LLC v. Maher Terminals, LLC*, 636 Fed. Appx. 1014 (Mem.) (Fed. Cir. 2016) (holding that monitoring locations, movement, and load status of shipping containers within a container-receiving yard, and storing, reporting and communicating this information in various forms through generic computer functions is patent ineligible).

Furthermore, at least the following decisions from our reviewing court have found many similar types of fundamental commercial practices related to collecting, receiving, analyzing, transmitting business information to be patent ineligible: *Concaten, Inc. AmeriTrak Fleet Solutions, LLC*, 2016 WL 5899749 (Fed. Cir. 2016) (mem.) (cert. denied), 2017 WL 1001313 (2017) (receiving, processing, and transmitting data is patent ineligible); *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (holding that collecting information, analyzing it, and displaying certain results of the collection and analysis is patent ineligible). In this light, Appellants' methods of, and systems for, processing shipping documentation data recited in claims 13 and 21 are commercial practices that are economic and fundamental in nature.

We conclude that receiving, processing, and transmitting shipping documentation data as recited in method claims 13 and 21 are fundamental economic practices and, therefore, constitute patent-ineligible subject matter. *See Alice*, 134 S. Ct. at 2357; *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *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”).

Alice Step Two

The Examiner also finds, and we agree, claims 13 and 21 do 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. Office Act. 3–4; Ans. 4–5. The additional claimed elements in claims 13 and 21 (a remote processor for receiving wireless signals sent from another vicinity (e.g., from a mobile transmission device associated with a vehicle)) are merely generic computer structures and/or instructions to implement the ideas on generic computers/processors. Thus, no more than a general purpose computer is recited in the claims on appeal, and we find the claims are not directed to an improvement to computer functionality, but to an abstract idea.

None of the individual steps of representative claims 13 and 21, viewed “both individually and ‘as an ordered combination,’” transform the nature of the claims into patent-eligible subject matter. *See Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79). The claimed sequences of steps are abstract ideas comprising only “conventional steps, specified at a high level of generality,” which is insufficient to supply an “inventive concept.” *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 71–2, 77–8, 82–3).

Preemption

Appellants' contention (Br. 29) that claims 13 and 21 "pose no risk of preempting any 'building blocks of human ingenuity'" because the claims cover only operations/processing performed "while the vehicle and associated cargo is enroute to a location" is unpersuasive. Preemption is not a separate test, but is inherently addressed within the *Alice* framework. *See 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.").

Appellants' argument that the claims do not completely preempt others from the whole field identified by the Examiner of remotely processing shipping documentation data is conclusory and not persuasive that the claims do not still preempt a significant field of ideas.

Summary

In view of the foregoing, we sustain the Examiner's rejection under 35 U.S.C. § 101 of representative independent claims 13 and 21, as well as claims 14–20, 22–29, 31–37, and 39–41 grouped therewith.

35 U.S.C. § 103

For the reasons that follow, we agree with Appellants' arguments (Br. 30–35) that the combination of N & M and Official Notice does not meet the limitations recited in claims 21 and 35 (and thus by way of dependency, as

also recited in dependent claims 22–26, 37, and 39–41) of receiving shipping documentation data.

N & M

The Examiner determines that N & M Transfer (PR00002207) teaches all of the recited subject matter of independent claims 21 and 35, including a remote processor receives wireless signals and performs a method for processing shipping documentation data sent from the vicinity of a vehicle and generating billing information based on the shipping documentation data, except for specifically teaching extracting billing information from the shipping documentation data and inputting the billing information into accounting and billing software. Office Act. 4. Notably, the Examiner makes no determination as to any disclosure in N & M or the use of Official Notice of the timing element of claims 21 and 35 (“while the cargo is enroute to a location,” extracting the billing information and inputting it in to a billing and accounting software package). *See generally* Office Act. 4–6.

Although we find N & M discloses wirelessly transmitting (by fax as shown and described at PR00002200–2205) bills of lading and printing a manifest upon completion of bill entry (PR00002207), N & M clearly discloses doing so “immediately *after* a pick up is made.” PR00002207 (emphasis added). Thus, we agree with Appellants that “[t]here is no teaching or suggestion in N&M to perform tasks *while* the cargo is enroute to a location, as recited in Appellant[s’] claims” (Br. 32).

Based on the foregoing, and because the Examiner makes no determination as to any disclosure in N & M or the use of Official Notice of the timing element of claims 21 and 35, we agree with Appellants that “[n]othing in N&M nor the Official Notice (including Storch) teaches or

fairly suggests extracting billing information *while* the cargo is enroute to a location or inputting the extracted billing information into a billing and accounting software package *while* the cargo is enroute to a location, as recited in Appellant[s'] claim 21" (Br. 32), and as similarly recited in remaining independent claim 35. More specifically, we agree with Appellants' contention that "[t]here is no teaching or suggestion in N&M to perform tasks *while* the cargo is enroute to a location, as recited in Appellant[s'] claims" (Br. 32).

Finally, we agree with Appellants' contention that the manifest disclosed by N & M "is not a loading manifest for another vehicle [as claimed], but the manifest for the incoming vehicle" (Br. 32).

Official Notice

The Examiner takes Official Notice that "extracting billing information from the received shipping documentation data and inputting the billing information into an accounting and billing software is old and well known in the art" at the time of Appellants' invention, and relies on column 37, lines 25–55 of Storch as evidence to support the Official Notice. Office Act. 4. The Examiner first took the Official Notice in the Final Rejection mailed February 6, 2015, and Appellants timely and adequately contested the Official Notice in the response to that Final Rejection on June 26, 2015. *See* Appellants' Response filed June 26, 2015, pp. 16–18 (specifically pointed out the errors in the Examiner's action). In view of the foregoing, the Examiner's position that Appellants failed to adequately traverse the use of Official Notice (*see* Ans. 6–8) is untenable.

"Where a reference is relied on to support a rejection whether or not in a 'minor capacity,' there would appear to be no excuse for not positively

including the reference in the statement of the rejection.” *In re Hoch*, 428 F.2d 1341, 1342 n.3 (CCPA 1970). In the instant case before us on appeal, the Examiner has cited (Office Act. 4; Ans. 6) the additional reference to Storch in support of the obviousness rejection of claims 21–26, 35, 37, and 39–41. We have not considered this reference as supporting the Examiner’s use of Official Notice since it is not part of the statement of the rejection and may not be properly relied upon.³ *In re Hoch*, 428 F.2d at 1342 n.3.

Summary

Appellants’ arguments have shown error in the Examiner’s factual findings or ultimate conclusion of obviousness of independent claims 21 and 35, as well as dependent claims 22–26, 37, and 39–41 which are argued for the same reasons as claims 21 and 35. In view of the foregoing, we cannot sustain the Examiner’s rejection of 21–26, 35, 37, and 39–41 under 35 U.S.C. § 103 over the combination of N & M Transfer and Official Notice.

³ Even assuming arguendo, that Storch was positively included in the statement of the rejection, Storch does not actually support the disclosure for which it is relied upon. Notably, Storch only teaches transmitting completion information about a service order to a computer memory (col. 37, ll. 15–18), extracting billing information from the received completion information received (col. 37, ll. 41–47), and inputting the completion information into a computer controlled billing system 109 (col. 37, ll. 47–51). That is, Storch discloses extracting billing information from completion information about a service order, not from “shipping documentation data associated with cargo of [a] vehicle” as recited in claims 21 and 35.

CONCLUSIONS

The Examiner did not err in rejecting claims 13–29, 31–37, and 39–41 based upon a lack of patent eligible subject matter under 35 U.S.C. § 101; and the Examiner erred in rejecting claims 21–26, 35, 37, and 39–41 for obviousness under 35 U.S.C. § 103(a).

DECISION

For the above reasons, we affirm the Examiner’s rejection of claims 13–29, 31–37, and 39–41 under 35 U.S.C. § 101, and we reverse the Examiner’s rejection of claims 21–26, 35, 37, and 39–41 under 35 U.S.C. § 103(a).

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED