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Anthony John Ferguson  
PO Box 101  
St Pauls, 2031  
AUSTRALIA

EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ANTHONY JOHN FERGUSON

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Appeal 2017–003752  
Application 12/077,863  
Technology Center 3600

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Before HUBERT C. LORIN, ANTON W. FETTING, and  
NINA L. MEDLOCK, *Administrative Patent Judges*.  
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE<sup>1</sup>

Anthony John Ferguson (Appellant) seeks review under 35 U.S.C. § 134 of a final rejection of claims 1–18, the only claims pending in the application on appeal. This is the second time this application has come before us for appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

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<sup>1</sup> Our decision will make reference to the Appellant’s Appeal Brief (“Br.,” filed July 7, 2016) and the Examiner’s Answer (“Ans.,” mailed December 2, 2016), and Final Action (“Final Act.,” mailed February 18, 2016).

The Appellant invented a way of “creating a reconciled set of electronic books.” Specification para. 1.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A method of providing electronic-enabled accounting or bookkeeping comprising the steps of:

(a) the inclusion of a classification category code or codes corresponding to an accounting code of a chart of accounts associated with a person, business or entity into a financial transaction, by a person, business or other entity, with a financial institution;

(b) on the server of a financial institution associated with a person, business or other entity the capture and electronic storage of classification data together with other bibliographical data associated with a financial transaction to form a data aggregate;

(c) on the server of a financial institution associated with a person, business or other entity the provision of an electronic bank or other financial institution statement containing the sum of data aggregates for a given period;

(d) on a communications network, the access of data aggregates associated with the person, business or other entity and stored on the server of a financial institution;

(e) on a communications network the transmittal of data aggregates associated with a person, business or other entity to the server of a person, business or other entity;

(f) in a person, business or other entity's processing system, the quarantine of data aggregates not in a form or state compatible for use with the system requirements of that servers accounting or bookkeeping program;

(g) in a person, business or other entity's processing system, the amendment of faulty or invalid data aggregates into

a form or state compatible for use with the system requirements of that servers accounting or bookkeeping program;

(h) in a person, business or other entity's server processing system, the processing of data aggregates into a form or state compatible for use with the system requirements of that servers bookkeeping or accounting program;

(i) in a person, business or other entity's server processing system, the transfer of the processed data aggregates into the server's bookkeeping or accounting program ledgers, [sic ;]

j) in a person, business or other entity's server processing system, the reconciliation of program data with bank account statement data and balances, [sic ;]

and

(k) in a person, business or other entity's server processing system, the generation of reconciled accounting reports.

Claims 1–18 stand rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

## ANALYSIS

### The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, [] determine whether the claims at issue are directed to one of those patent-ineligible concepts. [] If so, we then ask, “[w]hat else is there in the claims before us? [] To answer that question, [] 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. [The Court] described step two of this analysis as 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 Corp., Pty. Ltd. v CLS Bank Intl*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner finds the claims directed to providing bookkeeping or accounting electronically, wherein a reconciled set of electric books is created by introducing and integrating accounting codes into transaction data to form a data aggregate on the financial institution server. Final Act. 4–5.

Although the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case’s claims themselves and the

Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 1 recites that it is a method of providing electronic-enabled accounting or bookkeeping. The steps in claim 1 result in generating financial reports. The Specification at paragraph 1 recites that the invention relates to providing bookkeeping or accounting electronically, and more particularly, creating a reconciled set of electronic books. Thus, all this evidence shows that claim 1 is directed to providing electronic-enabled accounting or bookkeeping, i.e. bookkeeping. This is consistent with the Examiner's finding.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of bookkeeping is a fundamental business practice long prevalent in our system of commerce. The use of bookkeeping is also a building block of accounting. Thus, bookkeeping, like hedging, is an “abstract idea” beyond the scope of §101. *See Alice Corp. Pty. Ltd.* at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of bookkeeping at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, unlike the claims found non–abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, and presentation and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 1 is directed to the abstract idea of retrieving, analyzing, and presenting data.

The remaining claims merely describe parameters for accepting accounting codes. We conclude that the claims at issue are directed to a patent–ineligible concept.

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent–ineligible abstract idea into a patent–eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps,

with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2358 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to provide, access, analyze, and present data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellant’s method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellant’s method claims simply recite the concept of bookkeeping as performed by a generic computer. To be sure, the claims recite doing so by advising one to provide an accounting code and reformat the data as needed, holding further



processing while doing so, and then analyze and present the data. But this is no more than abstract conceptual advice on the parameters for such bookkeeping and the generic computer processes necessary to process those parameters, and does not recite any particular implementation.

The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The 10+ pages of Specification do not bulge with disclosure, but only spell out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of bookkeeping under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of bookkeeping using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360. To the extent Appellant relies on the limitation that the code is entered by some person, this is typical. Transaction data are generally entered by some person, even if machine-assisted.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

*Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

We are not persuaded by Appellant's argument that the introduction of a code to transform the nature of that data; inclusion of a suspense code; and provision of an accounting code to be applied to and included in bank initiated transactions and for third party payees amount to significantly more than the basic financial transaction in current use. App. Br. 6. Adding some code to anything is no more than generic abstract conceptual advice fundamental to all accounting and bookkeeping. Adding some new code, even if novel, is itself an extension of the fundamental abstraction in accounting and bookkeeping. The meaning of such a code is discernable only to the human mind, and is afforded no weight. *In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969). Any code as a piece of data usable for aggregating and sorting is functionally identical to any other such code, including codes already used in general and subsidiary ledgers. Thus, adding some code is itself an abstraction and does not elevate an abstract idea to the non-abstract realm.

We are not persuaded by Appellant's argument that accounting will become fully automated; manual identification of transactions and the re-keying of data will be redundant and obsolete; a link will now exist between the currently discrete systems of financial institutions transaction data with electronic accounting; trading results will be available in real time and also sufficient information will be available to determine the tax liabilities due shortly thereafter; and it will reduce compliance burden. App. Br. 9. All of these are advantages of all electronic accounting and bookkeeping systems generally. They all result from using codes that are only meaningful to the human mind. That an abstract idea produces tangible

benefits does not make it less abstract. The aphorism of “a stitch in time” is the basis of the modern preventative maintenance industry and is perhaps among the most beneficial pieces of advice ever related, but it remains abstract conceptual advice.

We are not persuaded by Appellant’s argument that the claims describe a complete process; the steps are clear, specific, consistent and demonstrable; and the results are tangible. App. Br. 10. The steps are far from complete and recite little more than results to be achieved along the process. To the extent Appellant means that the steps include both the beginning and end of the process, such is not indicative of a process being non-abstract, as many items of advice cover as much. As to clarity and specificity, again, the steps recite results to be achieved and offer no implementation specifics or clarity as a result. As to tangible results, this is the same argument presented earlier and is answered accordingly.

We are not persuaded by Appellant’s argument that the facts of this case differ from those in Federal Circuit and Supreme Court decisions. App. Br. 10–12. The facts of every case differ from other cases. This does not negate the overriding fact that the facts of this case, when put through the *Alice* tests, result in finding the claims non-eligible as we find supra.

We are not persuaded by Appellant’s argument that no one in the art would be familiar with the introduction of a code by a party and the subsequent download and automatic assimilation. App. Br. 12. “While the claims may not have been anticipated or obvious because the prior art did not disclose [the selection criteria], that does not suggest that the idea of [‘selecting’ errant files] is not abstract.” *Intellectual Ventures I LLC v.*

*Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016); *see Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“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 possible patentable subject matter.” (footnote omitted)).

We are not persuaded by Appellant’s argument that the claims are specifically directed to actual, physical, financial transactions and apply to every transaction; the claims are implemented in a tangible way; the claims have a specific application; the mechanism of the steps in the performance of the method is observable and verifiable; the claims are apparatus specific; and the claims produce tangible, verifiable results. App. Br. 15. Any advice as to financial transactions, such as verifying the transaction amount, would be specifically directed to actual, physical, financial transactions and apply to every transaction. There is no evidence the claims are implemented in a tangible way. Indeed adding a transaction code and altering the process flow to find and correct formatting or other data problems is fundamental to bookkeeping per se, even in manual systems. Advice as such may have a specific application. Steps in advice are typically observable and verifiable, for otherwise there would be little way to follow the advice. There is no evidence the claims are apparatus specific. Indeed, the Specification only describes generic computers loaded with financial transaction software that is absent any implementation details. Thus, all of these points either lack supporting evidence or are not indicative of something non-abstract.

We are not persuaded by Appellant’s argument that

The inclusion of a code into transaction data transforms the data aggregate into a form or state now compatible with

accounting system requirements then capable of providing that data to business, person or other entity in a manner not currently possible, makes the functioning of the specific apparatus i.e. the financial institution computer, more efficient in its operation by now being able to provide customers with data in a form that can be now utilised (by the customer) in a manner not previously possible.

App. Br. 17. Any recitation of adding a code into a transaction stream is no more than abstract conceptual advice. It is also no more than conventional data processing, which our reviewing court finds ineligible. *Elec. Power Grp. v. Alstom S.A., id.* See also *Smart Systems Innovations, LLC v. Chicago Transit Authority*, 873 F.3d 1364, 1372 (2017) (claims directed to the collection, storage, and recognition of data are directed to an abstract idea under *Alice* step one).

We are not persuaded by Appellant’s argument that “the illustrative flow charts and the computer functions revealed at each new step clearly show that the computer recitations amount to more than mere instructions to implement an abstract idea on a computer.” App. Br. 18. Figure 1 contains the sole flow chart, and presents purely conventional data steps at a level of detail so high as to be no more than parts of abstract conceptual advice.

We are not persuaded by Appellant’s argument that “[t]he transfer or download of data in the manner disclosed in the claims is not possible at present as the data stored by financial institutions are not in a form or state compatible or suitable for system requirements.” *Id.* The fact that trillions of dollars are successfully transacted daily across the world shows this allegation to be erroneous on its face. To the extent the statement is narrower in meaning that no system uses the recited code, then the argument

is almost meaningless, as it devolves down to arguing the use of such a code, which as we find supra is abstract conceptual advice.

We are not persuaded by Appellant's argument that in the recent judicial decision in *Motio Inc. v BSP Software, LLC et al*, Case No. 4:12-cv-647(E.D. Tex. January 4 2016) the court found that an automated invention was patent eligible due to the manner of automation. App. Br. 18. This is a district court case of different facts and does not bind panels of this Board.

We are not persuaded by Appellant's argument that the only means for the data aggregates to be downloaded and automatically assimilated is via the internet, and that the only way that the currently discrete systems of banking and electronic accounting can be linked or become interactive so as to implement the method of the pending claims, is via the internet. App. Br. 20. Appellant presents no evidence for this argument, and the argument is erroneous on its face. Data can be downloaded and aggregated from any source, and networks can be linked by any communications mechanism. Appellant conflates technical constraints with industry practice constraints. Merely because industries follow a common practice to minimize cost and confusion does not mean that such common practice is a technological problem requiring a technological solution. The steps recited in the claims would be applicable to manual bookkeeping systems that rely on data from external entities that might require reformatting.

The remaining arguments are variations on those we respond to supra.

CONCLUSIONS OF LAW

The rejection of claims 1–18 under 35 U.S.C. § 101 as directed to non–statutory subject matter is proper.

DECISION

The rejection of claims 1–18 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED