



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.
12/014,887	01/16/2008	Paul V. Morinville	IBIG1100-10	1374
38844	7590	09/27/2019	EXAMINER	
Loveless Law Group, PLLC 4760 Preston Road Ste 244-357 Frisco, TX 75034			WINTER, JOHN M	
			ART UNIT	PAPER NUMBER
			3685	
			NOTIFICATION DATE	DELIVERY MODE
			09/27/2019	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eofficeaction@appcoll.com
ryan@lovelesslawgroup.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL V. MORINVILLE

Appeal 2017-004427
Application 12/014,887¹
Technology Center 3600

Before HUBERT C. LORIN, MICHAEL W. KIM, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Paul V. Morinville (Appellant) filed a Request for Rehearing (“Request” or “Req.”) under 37 C.F.R. § 41.52 for reconsideration of our Decision (“Decision” or “Dec.”) on Appeal mailed June 7, 2019. The Decision affirmed the Examiner’s rejection of claims 1–7 and 15–27 under 35 U.S.C. §§ 101 and 102(b). We have jurisdiction over the Request under 35 U.S.C. § 6(b).

We note at the outset that a Request for Rehearing “must state with particularity the points believed to have been misapprehended or overlooked by the Board.” 37 C.F.R. § 41.52(a)(1). A Request for Rehearing is not an

¹ Appellant identifies “Paul V. Morinville” as the real party in interest. Appeal Brief 4.

opportunity to rehash arguments raised in the Briefs. Neither is it an opportunity to merely express disagreement with a decision without setting forth points believed to have been misapprehended or overlooked. Arguments not raised in the briefs before the Board and evidence not previously relied on in the briefs also are not permitted except in the limited circumstances set forth in § 41.52 (a)(2) though (a)(4). *Id.*

ANALYSIS

35 U.S.C. § 101

Under Section II (A) of the Request, Appellant contends that the Board has misapprehended the claims. In the first paragraph, Appellant reproduces claim 1 and highlights the terms “automatically” and “business information items below” from step (d), and concludes: “The computer uses association for one particular business item to automatically propagate access for other items lower (“below”) in a hierarchy of the business items.” Req. 3. In the next paragraph Appellant states that “the current claimed concept only cares about what is relatively below a business item in a particular hierarchy. Once a role has been associated with that particular business item, the system automatically propagates that role to have access to things at the lower levels. The claimed concept may literally have no other business items considered to be at the same ‘level.’” *Id.* at 4.

Under the heading of Section III of the Request, Appellant states: “**A Proper 101 Analysis Was Not Conducted under Applicable USPTO Guidelines.**” *Id.* Under Section III(A), Prong 1 of the 2A analysis, Appellant argues “a proper analysis would have considered, for example, limitations (c) and (d) of Claim 1 and discovered that [sic] no such

groupings of abstract ideas in Section I of the 2019 Revised Subject matter Eligibility Guidance correspond to such an idea.” *Id.* at 5–6. According to Appellant, in addition to the Examiner’s abstraction, “the Board also provide [sic] another abstraction – that the claim merely recite ‘assigning access rights.’” *Id.* at 6 (citing Dec. 8).

Appellant’s argument is unfounded because it mischaracterizes our position. We stated in our Decision that the claim “limitations under the broadest reasonable interpretation, recite assigning access rights to a user because the limitations recite operations that would ordinarily take place in granting permissions for controlling access to information.” Dec. 8. We further explained: “What remains of claim 1 are steps (c) and (d): associating access rights for a first role with an information item, and enabling access by the first role to the information item and items below that in the hierarchical content structure—which involve managing personal behavior by following rules and instructions based upon rights of access associated with a role (*see* Spec. ¶ 19 *supra*). Specifically, a right, in this instance, is no more than a rule or instruction as to who is or is not permitted access to certain information based on access to other information.” *Id.* at 8–9. Contrary to Appellant’s argument, we explicitly stated that limitations (c) and (d) fall into the Guidance’s abstract idea groupings because “[m]anaging personal behavior by following rules and instructions is one of certain methods of organizing human activity, and thus, an abstract idea.” *Id.* at 9 (citing Guidance, 84 Fed. Reg. at 52).

Under Section III(B), Prong 2 of the 2A analysis, Appellant argues that “it cannot be disputed that the claims have no application outside of the particular computer environment in which they operate.” Req. 7. But, a

general-purpose computer that merely executes the judicial exception is not a particular computer environment. *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 716–17 (Fed. Cir. 2014), *cited in* MPEP § 2106.05(b)(I). Because the computer here merely executes the judicial exception by implementing steps (c) and (d), claim 1 does not recite a particular machine. *See* Dec. 9 (We determine claim 1 does not recite “an application of the abstract idea with, or by use of a particular machine.”).

Under Section III(C), Step 2B analysis, Appellant argues:

Here, rather than having a showing of the conventional nature of the combination of elements, the evidence shows the opposite –a lack of such a feature. While multiple analogies were given in the military context, no evidencing [sic] concerning such an operation was provided. And, even if it was provided, the Applicant has already explained why it is not germane to the actual ‘specific limitations’ of the claims.

Req. 9.

Although we are not clear from this argument what we have purportedly misapprehended, we stated in the opinion: “Because these claims, in addition to the judicial exception, recites only a well-understood, routine, conventional element/combination previously known in the industry, we conclude there is no genuine issue of material fact regarding step two of the Examiner’s *Alice* analysis.” Dec. 11. The court in *Berkheimer* held that “[t]he patent eligibility inquiry may contain underlying issues of fact.” *Berkheimer*, 881 F.3d at 1365 (quoting *Mortgage Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016) (“The § 101 inquiry ‘*may* contain underlying factual issues.”)). The inquiry as to whether a claim element or combination is well-understood, routine, and conventional falls under step two in the § 101 framework.

Berkheimer v. HP Inc., 890 F.3d 1369, 1374 (Fed. Cir. 2018) (citation omitted). As such, there is no genuine issue of material fact when the only alleged “inventive concept” is the abstract idea. *Id.* (“*Berkheimer* and *Aatrix* leave untouched the numerous cases from this court which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea”) (citation omitted). “When there is no genuine issue of material fact regarding whether the claim element or claimed combination is well-understood, routine, [and] conventional to a skilled artisan in the relevant field, this issue can be decided on summary judgment as a matter of law.” *Berkheimer*, 881 F.3d at 1368. Thus, evidence *may* be helpful where, for instance, facts are in dispute, but evidence is not always necessary. Here there is no factual dispute.

Accordingly, we are not apprised of any points misapprehended or overlooked by the Board in sustaining the rejection under 35 U.S.C. § 101.

35 U.S.C. § 102(b)

Under Section IV of the Request, Appellant argues that column 6, lines 50–60 of Gupta fail to disclose “the computer automatically enabling access by the first role to the first one of the business information items and business information items below the first one of the business information items in the hierarchical structure” (Req. 9), because “the claim recites using an association ***with a particular item*** for a particular role to automatically propagate access to other items at a lower (“below”) point in the hierarchy.” *Id.* at 11.

We are not persuaded at least because Appellant has not explained with any specificity why the portions cited in Gupta fail to disclose the

disputed limitation, as interpreted in light of the Specification. Besides expressing disagreement, Appellant's argument fails to set forth points believed to have been misapprehended or overlooked.

In our Decision, we reproduced Gupta's disclosure at column 6, lines 50–60, which discloses that “[s]ecurity classification labels can be linked and can be formed in a hierarchical structure. A security classification label A may have a parent label B, so that granting access to A automatically grants access to B and all antecedents of B.” Dec. 13 (quoting Gupta 6:51–54). According to Gupta, “[t]he security classification label is a measure of the sensitivity of the information, and is the means through which access may be allowed or denied.” Gupta 6:47–50. By way of example, Gupta explains:

The labels towards the root **42** of the hierarchy are for less sensitive information and have a lower security rank, whereas labels towards the leaf **44** are more sensitive and have a higher security rank. When a subject is provided access to a more sensitive label, they also have access to the less sensitive labels that are its antecedents. For example, referring to FIG. 2, if a user has access to Patient Financial Sensitive **46** information, they also have access to Patient Financial **48** and Patient Common **50** information. The purpose of linking **5** security classification labels is to simplify the task of assigning access rights.

Id. at 6:55–65. Figure 2 is reproduced below:

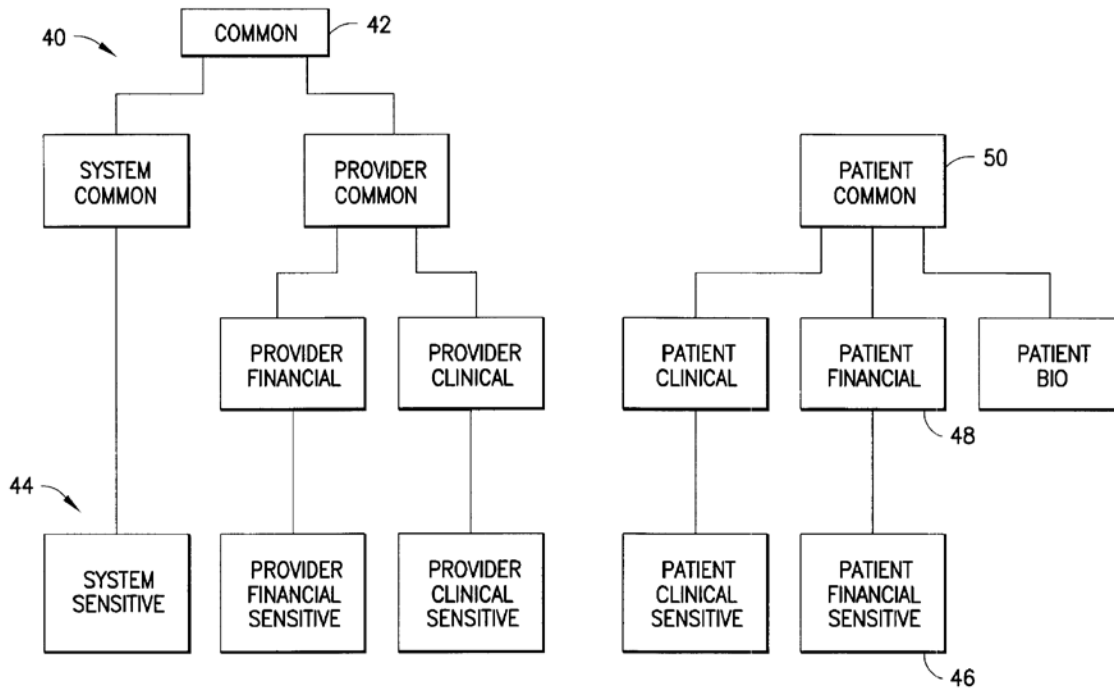


FIG.2

Gupta discloses “the computer automatically enabling access by the first role to the first one of the business information items and business information items below the first one of the business information items in the hierarchical structure.” because when a user has been given access to Patient Financial Sensitive 46 information, which is higher on the hierarchy, the user also gets access to the less sensitive information items 48 and 50, which are at a lower point in the hierarchy. *See* Gupta, Fig. 2 above. Therefore, we are not persuaded we misapprehended or overlooked any points, and Appellant’s request to reverse the rejection under 35 U.S.C. § 102(b) is denied.

Appeal 2017-004427
Application 12/014,887

DECISION

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).

DENIED