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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARTINEZ VENCIA ADDAE, FANG LU,
VANDANA MALLEMPATI, and JEHAN MOGHAZY

Appeal 2017-004439¹
Application 12/145,631²
Technology Center 3600

Before MICHAEL C. ASTORINO, NINA L. MEDLOCK, and
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–3, 5–9, 11–15, and 17–19. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed August 25, 2016) and Reply Brief (“Reply Br.,” filed January 24, 2017), and the Examiner’s Answer (“Ans.,” mailed January 11, 2017) and Final Office Action (“Final Act.,” mailed April 29, 2016).

² Appellants identify International Business Machines Corporation as the real party in interest. App. Br. 1.

CLAIMED INVENTION

Appellants' claimed invention "relates generally to information processing systems and more particularly to a methodology and implementation for scheduling meetings in calendar applications" (Spec. 1, ll. 9–12).

Claims 1, 7, and 13 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for processing scheduling of meetings on a primary user's calendar application, said method being implemented in a hardware and/or software embodiment, said method comprising;

enabling a primary user to input to said calendar application a user priority level for each of a plurality of requesting users, said requesting users being enabled to schedule meetings on said calendar application of said primary user;

saving said primary user input to said calendar application including a listing of said plurality of requesting users together with corresponding primary user input priority levels for each of said plurality of requesting users;

receiving a request from a requesting user to view said calendar application of said primary user;

retrieving a user priority level for said requesting user in response to said receiving;

retrieving user priority levels for other requesting users having previously scheduled meetings on said calendar application of said primary user;

displaying said primary user's calendar application on a display device viewable by said requesting user, said primary user's calendar application being displayed without showing meetings previously scheduled by others having a lower user priority level than said requesting user; and

enabling said requesting user to schedule meetings on said primary user's calendar application in accordance with said user priority level assigned by said primary user to said requesting user whereby said requesting user is enabled to schedule meetings in place of previously scheduled meetings scheduled by other requesting users having a lower user priority level on said primary user's calendar application.

REJECTION

Claims 1–3, 5–9, 11–15, and 17–19 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

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.” 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. *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (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.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, 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.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

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. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Appellants first argue that the § 101 rejection cannot be sustained because “the Examiner has rejected applicant’s claims as a group and does not address each claim individually” (App. Br. 17). In this regard, Appellants charge that “the Examiner does not address the wording of appellant’s claims individually but instead restates the claims in the Examiner’s own words and then rejects all of the claims as a group based not upon the applicant’s claim language but rather upon the Examiner’s re-statement of applicant’s claims” (*id.*).

Appellants’ argument is not persuasive of Examiner error at least because there is no requirement that the Examiner’s characterization of what the claim is “directed to” must precisely mirror the claim language. Instead, the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’”

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp.*, 790 F.3d at 1346). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

Here, it is clear from a fair reading of the Specification that the claimed invention is directed to scheduling meetings in calendar applications (*see, e.g.*, Spec. 2, ll. 19–27 (“The disclosed exemplary embodiments provide for prioritizing meetings and allowing a certain set of favorite people see the availability based on priority. . . . A high priority user is enabled to schedule a meeting on other users’ calendars based on the priority level of the scheduling user.”)). As such, we see no legal difficulty with the Examiner’s determination that the claims are directed to “scheduling [a] meeting on a user calendar” (Final Act. 4).

Focusing on the first step of the *Mayo/Alice* framework, Appellants argue that the claims are not merely abstract ideas because “[Appellants’] invention is claimed in three separate and implemented ‘concrete’ physical configurations” (App. Br. 19–20).³ But, that argument is not persuasive at

³ I.e., (1) a hardware-implemented and/or software-implemented step-by-step machine process for scheduling of meetings on a primary user’s displayed calendar application (claims 1–3, 5, and 6); (2) a computer program product comprising one or more computer-readable tangible storage devices having program instructions stored on at least one of the one or more storage devices for processing scheduling of meetings in a primary user’s calendar application (claims 7–9, 11, and 12); and (3) a calendaring system for processing scheduling of meetings in a primary user’s calendar application, comprising, *inter alia*, a server, a user terminal, input means, and a memory (claims 13–15 and 17–19).

least because the Supreme Court has long “warn[ed] . . . against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’” *Alice Corp.*, 134 S. Ct. at 2360 (alterations in original) (citation omitted).

The law also is clear that “not every claim that recites concrete, tangible components escapes the reach of the abstract-idea inquiry.” *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016). Although the claims recite physical components, e.g., a server, storage devices, a user terminal, these physical components merely provide the generic environment in which to implement the abstract idea, i.e., “scheduling [a] meeting on a user calendar.” For example, we find no indication in the Specification that the operations recited in the claims require any specialized computer hardware or other inventive computer components, invoke any assertedly inventive programming, or that the claimed invention is implemented using other than generic computer components, which is not enough for patent-eligibility. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“And after *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.’” (citation omitted)).

Turning to the second step of the *Mayo/Alice* framework, Appellants argue that even if the claims are directed to an abstract idea, the claims are nonetheless patent-eligible because the claims include additional elements that are “significantly more” than the judicial exception (App. Br. 20). Yet, aside from reproducing the language of claim 1, Appellants offer no

persuasive argument or technical reasoning to support that position (*id.* at 20–21). For example, Appellants do not contend that the claims improve the functioning of the computer itself or that they effect an improvement in any other technology or technical field.

Responding to the Examiner’s Answer in the Reply Brief, Appellants charge that the Examiner has “oversimplified the claims by looking at them generally and failing to account for the specific requirements of the claims” (Reply Br. 4 (emphasis omitted)).⁴ Appellants assert that the claims are directed to “an improvement to a computer-related technology that takes in user priority levels for a primary user’s calendar and automatically appl[ies] sets of rules for scheduling a meeting with the primary user by the requesting user” (*id.*). And Appellants maintain that the claims are, thus, analogous to the claims at issue in *McRO* (*id.*).

Citing the USPTO’s November 2, 2016 Memorandum to the Patent Examining Corps,⁵ Appellants assert that the claims in *McRO* described “a specific way (use of particular rules to set morph weights and transitions through phonemes) **to solve the problem** of producing accurate and realistic lip synchronization and facial expressions in animated characters, **rather than merely claiming the idea of a solution or outcome**” and that the claim elements of independent claim 1, 7, and 13 similarly “describe a particular way to **solve the problem of assigning priority for calendar requests and/or meetings for certain individuals as designated by a**

⁴ We note that the pages of Appellants’ Reply Brief are unnumbered; we refer to the title page as page 1, and treat the pages that follow as though consecutively numbered.

⁵ Available at <https://www.uspto.gov/sites/default/files/documents/McRo-Bascom-Memo.pdf>

primary user using a computer processor” (*id.* at 6). Further likening the present claims to those in *McRO*, Appellants also assert that “[l]ike *McRO*, the claimed invention is not merely describing the idea of a solution or outcome of scheduling of meetings in a primary user's calendar application” but instead “**presenting the steps to take to achieve the solution**, and . . . is not directed to an abstract idea according to the *McRO* court” (*id.* at 7).

In *McRO*, the Federal Circuit concluded that the claim, when considered as a whole, was directed to a “technological improvement over the existing, manual 3-D animation techniques” through the “use[] [of] the limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice.” *McRO*, 837 F.3d at 1316. Specifically, the Federal Circuit determined that the claimed rules allowed computers to produce accurate and realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animators; and that the rules were limiting because they defined morph weight sets as a function of phoneme sub-sequences. *Id.* at 1313. Appellants have not identified any analogous improvement here that is attributable to the claimed invention.

Appellants assert, as described above, that the claimed invention provides “an improvement to a computer-related technology” that applies a set of priority rules in scheduling a meeting with a primary user by a requesting user. But, we are not persuaded that the claims, thus, represent any technological improvement. Instead, it appears clear, when considered in light of the Specification, that the focus of the claimed invention, as recited, for example, in independent claims 1, 7, and 13, is on achieving a business objective (i.e., providing a meeting scheduling methodology and

system by which meetings can be scheduled according to a priority level thereby enabling more important meetings to be easily scheduled on otherwise unavailable times and dates) (*see* Spec. 2, ll. 8–12)), and not on any claimed means for achieving that goal that improves technology.

Rather than paralleling the claims in *McRO*, the present claims, in our view, are substantially similar to the claims at issue in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). There, the Federal Circuit held that the claims were not patent-eligible because “[t]he advance they purport to make is 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.” *Id.* at 1354.

Similarly here, we find that claim 1, for example, involves nothing more than collecting data (i.e., a listing of requesting users, together with corresponding priority levels set by a primary user; and a request from a requesting user to view the calendar application of the primary user); analyzing the data (i.e., retrieving (and comparing) the priority level of the requesting user to the priority levels of other requesting users having previously scheduled meetings on the primary user’s calendar application); and displaying the results of the collection and analysis (displaying the primary user’s calendar application without showing meetings previously scheduled by others having a lower user priority level than the requesting user) — without any asserted inventive technology for performing these functions.

In the Reply Brief, Appellants additionally reference the Federal Circuit decision in *BASCOM Global Internet Services, Inc. v. AT&T*

Mobility LLC, 827 F.3d 1341 (Fed. Cir. 2016), and assert that the claimed invention “follows a non-conventional and non-generic arrangement of setting priority levels for requesting users and allowing the requesting users to view and schedule meeting based on their priority level” and “follows a non-conventional and non-generic arrangement of prioritizing requests from certain users based on rules set by a primary user” (Reply Br. 9–10). Yet, we find no parallel between Appellants’ claims and the claims in *BASCOM*.

In *BASCOM*, the claims described an inventive concept in the non-conventional and non-generic arrangement of known, conventional pieces. *BASCOM*, 827 F.3d at 1350. Specifically, the Federal Circuit determined that the claimed installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user provided an inventive concept in that it gave the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. *Id.* Appellants do not identify any comparable non-conventional, non-generic arrangement of elements that is recited in the present claims.

We are not persuaded, on the present record, that the Examiner erred in rejecting claims 1–3, 5–9, 11–15, and 17–19 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

DECISION

The Examiner’s rejection of claims 1–3, 5–9, 11–15, and 17–19 under 35 U.S.C. § 101 is affirmed.

Appeal 2017-004439
Application 12/145,631

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