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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JASON A. FELDMAN

Appeal 2017-004540
Application 14/087,910¹
Technology Center 3600

Before ROBERT E. NAPPI, ELENI MANTIS MERCADER, and
JASON J. CHUNG, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 2, 4–7, 10–20, 22–25, and 28–38. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention is directed to scoring and processing of cross-border payment transactions. Spec. ¶ 1. Claim 1 is illustrative of the invention and is reproduced below:

1. A computer-implemented method for increasing authorization for electronically processed cross-border transactions, comprising:

¹ According to Appellant, MasterCard International Inc. is the real party in interest. App. Br. 2.

storing, in a database of a processing server of a financial corporation, a consumer profile, wherein the consumer profile includes data related to a consumer including at least an account identifier corresponding to a payment account associated with the related consumer and a device identifier corresponding to a computing device associated with a first country;

receiving, by a receiving device of the processing server of the financial corporation via a payment network, a browser cookie originating from the computing device, wherein the browser cookie includes at least the device identifier and an indication of the computing device being located in a second country;

receiving, by the receiving device of the processing server of the financial corporation via the payment network, an authorization request for a cross-border payment transaction, wherein the authorization request originates from the second country and includes at least the account identifier;

identifying, by a processing device of the processing server of the financial corporation via the payment network, a fraud score based on at least one fraud rule and based on at least the received indication of the computing device being located in the second country; and

transmitting, by a transmitting device of the processing server of the financial corporation via the payment network, at least the authorization request and the identified fraud score for approval or denial of the cross-border payment transaction.

REJECTION AT ISSUE

Claims 1, 2, 4–7, 10–20, 22–25, and 28–38 stand rejected under 35 U.S.C. § 101 as being directed to a judicial exception to patentable subject matter. Final Act. 2–8.

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant could have made, but chose not to

make, in the Briefs have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

The Examiner concludes claims 1, 2, 4–7, 10–20, 22–25, and 28–38 are directed to an abstract idea of identifying a fraud score for authenticating a cross-border transaction. Final Act. 2. Also, the Examiner analogizes the present claims to *Content Extraction and Transmission L.L.C. v. Wells Fargo Bank, National Association*, 776 F.3d 1343 (Fed. Cir 2014). *Id.* at 4. Additionally, the Examiner concludes the present claims do not amount to significantly more than an abstract idea because there are no technical improvements to the field and do not perform a transformation. *Id.* at 7–8.

Appellant argues the present claims are not directed to an abstract idea because the Examiner overlooks separate receiving steps in independent claims 1, 7, 13, 19, 25, and 31 that provide technical improvements to the problem of increasing authorization for electronically processed cross-border transactions similar to the improvement discussed in *Enfish LLC v. Microsoft Corporation*, 822 F.3d 1327. App. Br. 9–12. Appellant argues the present claims are distinguishable from *Content Extraction* because the court determined that the claims in *Content Extraction* involved merely the application of a previously known industry to a generic computer, which is unlike the present claims that increase the authorization of electronically processed cross-border transactions. *Id.* at 12–13. And Appellant argues the present claims recite significantly more than an abstract idea because they are similar to *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), in that they are rooted necessarily in computer technology and

overcomes problems arising in computer networks. *Id.* at 13–15. Moreover, Appellant argues the present claims amount to significantly more than an abstract idea because they are similar to *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, No. 2015-1763 (Fed. Cir. 2016)); the present claims recite an inventive concept that is found in non-conventional and non-generic arrangement of known, conventional pieces. *Id.* at 15–16; Reply Br. 3. In addition, Appellant argues the lack of a prior art rejection is evidence the present claims recite unconventional features, and weighs in favor of concluding the claims are patent eligible. We disagree with Appellant.

Following the decision in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S.Ct. 2347 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S.Ct. 1289, 1300 (2012)), we analyze claims where the abstract idea judicial exception to the categories of statutory subject matter is at issue using the following two-part analysis set forth in *Mayo*: 1) Determine whether the claim is directed to an abstract idea; and 2) if an abstract idea is present in the claim, determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. *See Alice*, 134 S. Ct. at 2350.

As to the first part of the analysis, examples of abstract ideas referenced in *Alice* include: fundamental economic practices;² certain

² *Alice Corp.*, at 2350: *e.g.*, intermediated settlement, *i.e.*, the use of a third party intermediary to mitigate settlement risk.

methods of organizing human activities;³ “an idea of itself”;⁴ and, mathematical relationships or formulas.⁵ Claims that include abstract ideas like these are examined under the second part of the analysis to determine whether the abstract idea has been applied in an eligible manner.

As to the second part of the analysis, we consider the claim as a whole by considering all claim elements, both individually and in combination. *Id.* at 2355. Limitations referenced in *Alice* that may be enough to qualify as “significantly more” when recited in a claim with an abstract idea include, as non-limiting or non-exclusive examples: Improvements to another technology or technical field;⁶ improvements to the functioning of the computer itself;⁷ and meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.⁸

Limitations referenced in *Alice* that are not enough to qualify as “significantly more” when recited in a claim with an abstract idea include, as

³ *Id.* at 2356: *e.g.*, a series of steps instructing how to hedge risk (citing *Bilski v. Kappos*, 561 U.S. 593, 599 (2010)).

⁴ *Id.* at 2355: *e.g.*, a principle, an original cause, a motive (citing *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) and *Le Roy v. Tatham*, 14 How. 156, 175 (1853)).

⁵ *Id.* at 2350: *e.g.*, a mathematical formula for computing alarm limits in a catalytic conversion process (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)), or a formula for converting binary-coded decimal numerals into pure binary form (*Benson*, 409 U.S. at 71–72).

⁶ *Id.* at 2358: *e.g.*, a mathematical formula applied in a specific rubber molding process (citing *Diamond v. Diehr*, 450 U.S. 175, 177–78 (1981)).

⁷ *Id.* at 2359.

⁸ *Id.* at 2360: noting that none of the hardware recited “offers a meaningful limitation beyond generally linking ‘the use of the [method] to a particular technological environment,’ that is, implementation via computers” (citing *Bilski*, 561 U.S. at 610–11).

non-limiting or non-exclusive examples: adding the words “apply it” (or an equivalent) with an abstract idea;⁹ mere instructions to implement an abstract idea on a computer;¹⁰ or requiring no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.¹¹

If there are no meaningful limitations in the claim that transform the abstract idea into a patent eligible application such that the claim amounts to significantly more than the abstract idea itself, the claim is directed to non-statutory subject matter under 35 U.S.C. § 101.

Step 2A

On this record, we see no error in the Examiner’s analysis and conclusion that the present claims are directed to an abstract idea. The present case is similar to *Fairwarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d, 1089 (Fed. Cir. 2016). In *Fairwarning*, the Federal Circuit cites to *Content Extraction*. *Id.* at 1097. And the Federal Circuit stated:

We find that, under step one, the claims of the ’500 patent are directed to an abstract idea. As the ’500 patent specification explains, the invention relates to a system and method of detecting fraud and/or misuse in a computer environment based on analyzing data such as in log files, or other similar records, including user identifier data. The district court found that the ’500 patent is directed to or drawn to the concept of analyzing records of human activity to detect suspicious behavior. We agree.

⁹ *Id.* at 2357–58.

¹⁰ *Id.*: *e.g.*, simply implementing a mathematical principle on a physical machine, namely a computer (citing *Mayo*, 132 S.Ct. at 1301).

¹¹ *Id.* at 2359: *e.g.*, using a computer to obtain data, adjust account balances, and issue automated instructions.

Id. at 1093 (internal citations and quotations omitted).

Similarly, in the present case, we conclude the present claims are directed to detecting fraud and/or misuse in a computer environment based on analyzing data such as in log files, or other similar records, including user identifier data, which is an abstract idea for the reasons discussed in *Fairwarning*. And we conclude the present claims are directed to or drawn to the concept of analyzing records of human activity to detect suspicious behavior, which is an abstract idea for the reasons discussed in *Fairwarning*.

Regarding Appellant's arguments that Examiner overlooked specific receiving steps recited in the independent claims that provide technical improvements similar to the improvements in *Enfish*, we conclude the receiving steps do not render the claims patent eligible. We also conclude the present claims recite an abstraction that happens to be performed with technology, yet offers not improvements to the underlying technology.

Because the present claims are directed to an abstract idea, we proceed to step (2B) of the *Alice*, two-part test.

Step 2B

On this record, we see no error in the Examiner's analysis and conclusion that the present claims do not amount to significantly more than an abstract idea. That is, we conclude the present claims are not technical improvements to the field and do not perform a transformation. Final Act. 7–8.

Regarding Appellant's arguments relying on *DDR*¹², *BASCOM*, and *McRo* (App. Br. 13–16; Reply Br. 3), we note in *Fairwarning*, the Federal

¹² We note that Appellant's arguments are misplaced because *DDR* pertains to step (2A) rather than step (2B). Nonetheless, we conclude the present

Circuit cited to *DDR, BASCOM*, and *McRO*, yet explained “[t]he claim limitations, analyzed alone and in combination, fail to add something more to transform the claimed abstract idea of collecting and analyzing information to detect misuse into a patent-eligible application.”

Fairwarning IP, LLC v. Iatric Systems, Inc., 839 F.3d at 1095. The rationale in *Fairwarning* applies to the present claims (i.e., the present claims do not amount to significantly more than an abstract idea).

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* App. Br. 17), Appellant improperly conflate 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*, 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”).

Appellant does not separately argue dependent claims 2, 4–6, 10–12, 14–18, 20, 22–24, 28–30, and 32–38 with particularity, but assert the rejections of those claims should be withdrawn for at least the same reasons as argued in independent claims 1, 7, 13, 19, 25, and 31. App. Br. 7, 17.

claims recite an abstract idea for the reasons stated *supra* and the present claims do not amount to significantly more for the reasons stated *infra*.

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Accordingly, for the reasons stated *supra*, we sustain the Examiner's rejection of: (1) independent claims 1, 7, 13, 19, 25, and 31; and (2) dependent claims 2, 4–6, 10–12, 14–18, 20, 22–24, 28–30, and 32–38 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's decision rejecting claims 1, 2, 4–7, 10–20, 22–25, and 28–38 under 35 U.S.C. § 101.

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