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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/395,658	03/13/2012	Damien Loveland	2009P01293WOUS	8703

138325 7590 07/31/2018

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EXAMINER
HAQ, NAEEM U

ART UNIT	PAPER NUMBER
3625	

NOTIFICATION DATE	DELIVERY MODE
07/31/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAMIEN LOVELAND

Appeal 2017-004587
Application 13/395,658
Technology Center 3600

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and ADAM J. PYONIN, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 3–16, and 23, which constitute are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellant identifies Koninklijke Philips Electronics N. V. as the real party in interest (App. Br. 3).

THE INVENTION

Appellant's claimed invention is directed to "creating a marketplace of lighting atmosphere settings related to at least one controllable lighting network" (Abstract).

Independent claims 1 and 12, reproduced below, are representative of the subject matter on appeal:

> 1. A system for creating a marketplace of lighting atmosphere settings related to at least one controllable lighting network, the system comprising:
>
> at least one processor configured to execute an awareness module and an executive module,
>
> wherein the awareness module detects a user identifier and a user input associated with a set of lighting atmosphere settings, and detects at least one environmental condition at a venue in which a lighting system implementing said lighting atmosphere settings is disposed, said condition being independent of said lighting system; and
>
> wherein the executive module transmits the user identifier and the user input from the awareness module to a schematizer;
>
> the schematizer configured to upload the set of lighting atmosphere settings, a setting identifier associated with the set of lighting atmosphere settings, and said environmental condition to the marketplace; and
>
> the marketplace configured to store the setting identifier and to enable retrieval of the set of lighting atmosphere settings on the basis of said environmental condition in exchange for a payment.

12. A method for modifying lighting atmosphere settings in a controllable lighting network comprising at least one memory for storing data and instructions, a user interface, a lighting source, and at least one processor configured to access the at least one memory and to execute a plurality of software modules, comprising an awareness module and an executive module, to perform computer-implemented steps comprising:

detecting, by the awareness module, a vote from a user, the vote associated with a first set of lighting atmosphere settings of a first venue;

receiving from the user, by the awareness module, an input associated with a second set of lighting atmosphere settings of a second venue having a value;

retrieving, by the schematizer, a setting identifier associated with the second set of lighting atmosphere settings from a preference database based on said vote;

transferring, by a marketplace, a payment of the value from the first venue to the second venue;

retrieving, by the schematizer, the second set of lighting atmosphere settings using the setting identifier from the marketplace; and

modifying, by the executive module, the first set of lighting atmosphere settings based on the second set of lighting atmosphere settings.

REJECTION

The Examiner made the following rejection:

Claims 1, 3–16, and 23 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 2.

ISSUE

The pivotal issue is whether the Examiner erred in finding claims 1, 3–16, and 23 are directed to non-statutory subject matter.

ANALYSIS

Regarding claim 1, Appellant argues the Examiner erred because "the detection of environmental conditions ***together with*** retrieving and selling the lighting settings in an electronic marketplace based on the detected conditions is unconventional" (Reply Br. 4–5 (emphasis in original), citing *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016); *see also* App. Br. 9–11, citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). Appellant similarly argues with respect to claim 12 that "in the context of lighting settings, retrieving an identifier of lighting settings on the basis of a user's vote associated with lighting settings is an unconventional technical feature that renders the claims patent eligible under 35 U.S.C. 101" (Reply Br. 5).

We are not persuaded by Appellant's arguments. 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 Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). Fundamental economic and business practices are often held to be abstract. *See,*

e.g., *Alice*, 134 S. Ct. at 2356 (holding the concept of intermediated settlement is an abstract idea directed to a "fundamental economic practice long prevalent in our system of commerce") (citation omitted); *see also buySAFE Inc. v. Google, Inc.*, 765 F.3d 1350, 1353–54 (Fed. Cir. 2014) (citing cases where contractual relations at issue constituted fundamental economic practices, and noting that forming or manipulating economic relations may involve an abstract idea); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (explaining that claims directed to "the mere formation and manipulation of economic relations" and "the performance of certain financial transactions" have been held to involve abstract ideas).

The Examiner finds that claim 1 is "directed to making a payment for a product, which is an abstract idea because it is similar to the fundamental economic practice at issue in *Bilski* [*Bilski v. Kappos*, 561 U.S. 593 (2010)] and *Alice Corp.*" (Final Act. 2), and claim 12 is "directed to receiving a vote from a user, which is an abstract idea because voting is a method of organizing a human activity" and is "also directed to transferring a payment from a first venue to a second venue which is abstract idea" (Final Act. 2–3).

We find that both claim 1 and claim 12 are directed to abstract ideas, as both claims are directed to the fundamental business practice of creating a marketplace in which payments are exchanged, indistinguishable from the methods found abstract by our reviewing court and described above. We further note that Appellant does not address and challenge the Examiner's findings regarding *Alice* step one.

According to *Alice* step two, the Examiner also finds, and we agree, claim 1 does not include limitations that are "significantly more" than the

abstract idea because the "limitations of detecting an environmental condition and retrieving a lighting setting on the basis of the condition" is "a step of receiving data and retrieving data, which is routine and conventional" (Final Act. 3; *see also* Ans. 3, citing *Parker v. Flook*, 437 U.S. 584 (1978)). Similarly the Examiner finds, and we agree, the voting steps in claim 12 amount to "an input by a user" (Ans. 4, citing Spec. ¶¶ 46, 67) and further that "[r]etrieving a product on the basis of a user input is routine and conventional" (Ans. 4).

We are not persuaded by Appellant's arguments. Unlike the claims in *DDR Holdings*, in which the court held "the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks" (*DDR Holdings*, 773 F.3d at 1257), Appellant's detection of "at least one environmental condition" appearing in claim 1 and Appellant's "retrieving . . . a setting identifier . . . based on said vote" appearing in claim 12 both solve no computer technology problems, but instead each claim is used to facilitate a sale. *See Bilski*, 561 U.S. at 643 ("neither the Patent Clause, nor early patent law, nor the current § 101 contemplated or was publicly understood to mean that [better ways to conduct business] are patentable.").

And unlike *Bascom*, in which the inventive concept included "the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user" (*Bascom*, 827 F.3d at 1350), we agree with the Examiner that "[t]aking the additional limitations individually and as an ordered combination, the claims do not recite significantly more than the abstract idea itself" (Ans. 4), because Appellant's inventive concept is not "found in the non-conventional

and non-generic arrangement of known, conventional pieces" (*Bascom*, 827 F.3d at 1350), but rather in the conventional and generic arrangement of known and conventional hardware and software used to facilitate a sale.

Further, while Appellant establishes the Specification discloses a physical structure that (1) "would enable the awareness module to detect an environmental condition" (Reply Br. 3, citing Spec. ¶¶ 67, 46) and (2) "can detect the intensity of natural light" (Reply Br. 3–4, citing Spec. ¶¶ 42, 63, 67), Appellant points to no portion of the disclosure to support the argument that the detection of environmental condition or a setting made based on a vote are "unconventional technical feature[s]" when considered "in the context of lighting settings." *See* Reply Br. 3–5.

Accordingly, we affirm the Examiner's rejections of claims 1, 3–16, and 23 under 35 U.S.C. § 101 as directed to an abstract idea, and the detection of environmental conditions and the setting made based on a vote do not transform the claims to patent-eligible subject matter.

CONCLUSION

The Examiner did not err in finding claims 1, 3–16, and 23 are directed to non-statutory subject matter.

DECISION

The Examiner's decision rejecting claims 1, 3–16, and 23 as directed to non-statutory subject matter 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)(1)(iv).

AFFIRMED