



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.
13/401,913	02/22/2012	MARK DUQUETTE	CAM920110062US1	6508
37945	7590	09/18/2018	EXAMINER	
DUKE W. YEE YEE AND ASSOCIATES, P.C. P.O. BOX 802333 DALLAS, TX 75380			TORRICO-LOPEZ, ALAN	
			ART UNIT	PAPER NUMBER
			3683	
			NOTIFICATION DATE	DELIVERY MODE
			09/18/2018	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):

ptonotifs@yeeiplaw.com
mgamez@yeeiplaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK DUQUETTE, SRI VYTHESWARAN,
and KEVIN J. WILLIAMS

Appeal 2017-004589
Application 13/401,913
Technology Center 3600

Before BIBHU R. MOHANTY, MEREDITH C. PETRAVICK, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 from the final rejection of claims 18–20, 22–30, and 32–38 which are all the claims pending in the Application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to the field of project planning and utilizing historic projects to estimate a new project schedule based on user provided high level parameters (Spec., para. 1). Claim 18, reproduced below, is representative of the subject matter on appeal.

18. A computer program product comprising a non-transitory computer readable storage medium comprising computer usable program code embodied therewith, the computer usable program code when executed by a processor, cause the processor to:

maintain a data warehouse for historic projects, wherein said data warehouse comprises a plurality of different artifacts per project, human and organizational resources consumed while producing each of the different artifacts, number of defects associated with each of the artifacts, inter-artifact temporal dependencies, and timelines for producing each of the artifacts;

receive a set of parameters for a new project, wherein said parameters define a scope of the new project at a level of abstraction above an artifact level, wherein the at least two historic projects and the new project are software development projects;

establish without a user intervention a set of key artifacts and stages needed for completing the new project, where the set of key artifacts and stages are consistent with the set of parameters;

determine a set of at least two historic projects having data that is maintained in the data warehouse, wherein the at least two historic projects have at least one artifact similar to one of the key artifacts or have at least one stage similar to one of the stages of the new project wherein similarity determination is based on metadata associated with the set of at least two historic projects;

evaluating without the user intervention each historic artifact and historic stage associated with the set of at least two

historic projects; wherein the evaluating comprises determining weighting points for the each of the artifacts based on the number of defects associated with the each of the artifacts,

determining, based at least in part on the evaluation, an approximate timeline for the key artifacts and stages for the new project, wherein the weighting points dictate contribution of the each of the key artifacts in the determination of the approximate timeline; and

generate a schedule for the new project based on aggregation and optimization of the approximate timelines for the key artifacts and stages, wherein the schedule breaks down the new project by the stages and the key artifacts and provides the estimated timelines.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Lewis	US 6,546,506 B1	Apr. 8, 2003
Hirano	US 2004/0128189 A1	July 1, 2004
Kayahara	US 2005/0278209 A1	Dec. 15, 2005
Richardson	US 7,069,229 B1	June 27, 2006
Yurekli	US 2008/0066072 A1	Mar. 13, 2008
Sparago	US 7,350,185 B2	Mar. 25, 2008
Cantor	US 2009/0299782 A1	Dec. 3, 2009
Bugayenko	US 2011/0196798 A1	Aug. 11, 2011
Gordon	US 2013/0024231 A1	Jan. 24, 2013
Carlson	US 2013/0132440 A1	May 23, 2013
Duquette	US 2013/0218626 A1	Aug. 22, 2013

Alexander Novichkov, *Visualization of the Change Request Hierarchy in IBM Rational Using the GanttChart*, ARTICLES AND SOFTWARE FOR IBM RATIONAL. ALEXANDER'S BLOG (Oct. 22, 2009) ("Novichkov").

The following rejections are before us for review:

1. Claims 25 and 34 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.
2. Claims 18–20, 22–30, and 32–38 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
3. Claims 18, 20, 22, 26, 30, 32, and 35 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon, Carlson, Richardson, Cantor, Lewis, and Kayahara.
4. Claims 19, 23, 24, and 33 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon, Carlson, Richardson, Cantor, Lewis, Kayahara, and Novichkov.
5. Claims 25 and 34 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon, Carlson, Richardson, Cantor, Lewis, Kayahara, and Hirano.
6. Claim 27 is rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon, Carlson, Richardson, Cantor, Lewis, Kayahara, and Sparago.
7. Claims 28 and 36 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon, Carlson, Richardson, Cantor, Lewis, Kayahara, and Bugayenko.
8. Claims 29 and 37 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon, Carlson, Richardson, Cantor, Lewis, Kayahara, and Yurekli.
9. Claim 38 is rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon, Carlson, Cantor, and Lewis.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence¹.

ANALYSIS

Rejection under 35 U.S.C. § 112, second paragraph

The Appellants have not argued this rejection and state that this rejection is not disputed (App. Br. 15). Accordingly, this rejection is sustained.

Rejection under 35 U.S.C. § 101

The Appellants argue that the rejection of claim 18 is improper under 35 U.S.C. § 101 because it is not directed to an abstract idea and further because the claim avoids preemption (App. Br. 15, 16; Reply Br. 2–5).

In contrast, the Examiner has determined that rejection of record is proper (Final Act. 4–7; Ans. 2, 3).

We agree with the Examiner. 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.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

¹ *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

In judging whether claim 18 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* This is a search for an “inventive concept” an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.* at 2358.

Here, we determine that the claim is directed to the concept of using historical data for past projects to determine a schedule for a new project. This is a method of organizing human activities, and is an abstract idea beyond the scope of § 101. In *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) collecting information, analyzing it, and displaying results from certain results of the collection and analysis was held to be an abstract idea. The Specification states that the invention relates to the field of project planning and utilizing historic projects to estimate a new project schedule based on user provided high level parameters (Spec., para. 1).

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the

claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not. Paragraphs 11, 13, and 37 of the Specification disclose using generic computer components in a conventional manner for their known functions.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

We note the point about pre-emption (App. Br. 16). While pre-emption “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*Alice*, 134 S. Ct. at 2354 (quoting *Mayo*, 566 U.S. Ct. at 69–70), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). See also *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), cert. denied, 136 S. Ct. 701, 193 (2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

For these reasons, the rejection of claim 18 is sustained. The Appellants have provided the same arguments for the remaining claims which are drawn to similar subject matter and the rejection of these claims is sustained as well.

Rejection under 35 U.S.C. § 103(a)

The Appellants argue that the rejection of claims 18 and 30 under

35 U.S.C. § 103(a) is improper because the cited combination of six references would not have been obvious (App. Br. 16–28).

In contrast, the Examiner has determined that rejection of record is proper (Ans. 3–12).

We agree with the Appellants. Here, the rejection of record requires a modification requiring six references as listed in the Final Rejection at pages 7–21. We have reviewed and determined that the rejection of record, which includes the Gordon, Carlson, Richardson, Cantor, Lewis, and Kayahara references, lacks articulated reasoning with rational underpinnings without impermissible hindsight. Accordingly, the rejection of claim 18 and its dependent claims is not sustained. The same rejection is applied to independent claim 30 and the rejection of this claim and its dependent claims is not sustained for the same reasons given above.

The Appellants have not argued separately that the rejection of claim 38 lacks a proper rationale. Here, unlike the rejection of claims 18 and 30 which were based on the cited six references, the rejection of claim 38 was made with only the four references of Gordon, Carlson, Cantor, and Lewis and the Appellants did not argue the combination of references as not being obvious for this particular rejection separately.

However, for claim 38, the Appellants did argue that the cited rejection fails to disclose the claim limitation to determine a timeline “based on a number of defects associated with the each of the artifacts” (App. Br. 28, 30). In contrast the Examiner has determined that the cited claim limitation is shown by Lewis at col. 4, lines 35–59 (Ans. 12). We disagree with the Examiner as the citation to Lewis shows estimates are not “based on a number of defects associated with the each of the artifacts” but rather the

number of test cases to be executed in addition to the projected number of defects found. Accordingly, this rejection of claim 38 is not sustained.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting the claims 25 and 34 under 35 U.S.C. § 112, second paragraph, as being indefinite.

We conclude that Appellants have not shown that the Examiner erred in rejecting the claims 18–20, 22–30, and 32–38 are rejected under 35 U.S.C. § 101.

We conclude that Appellants have shown that the Examiner erred in rejecting the claims 18–20, 22–30, and 32–38 under 35 U.S.C. § 103(a) as listed in the Rejections Section above.

DECISION

The Examiner's rejection of claims 18–20, 22–30, and 32–38 is sustained.

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED