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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID PULLMAN

Appeal 2017-004700
Application 14/714,482
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claim 1. We have jurisdiction under 35 U.S.C. § 6(b). Appellant appeared for oral hearing on March 26, 2019.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims a method and device for pooling intellectual property assets for valuing and securitizing intellectual property assets. (Spec. ¶ 2, Title).

Claim 1 is on appeal.

1. A method for creating a pool of intellectual property assets for securitization comprising the steps of:

identifying rights to each of a plurality of intellectual property assets including a first intellectual property asset and a second intellectual property asset, the rights including first rights corresponding to a first revenue stream and second rights corresponding to a second revenue stream;

identifying revenues in the first revenue stream associated with the first intellectual property asset so as to define first asset first revenues, and revenues in the second revenue stream associated with the first intellectual property asset so as to define first asset second revenues;

identifying revenues in the first revenue stream associated with the second intellectual property asset so as to define second asset first revenues, and revenues in the second revenue stream associated with the second intellectual property asset so as to define second asset second revenues;

selecting, using a processor, at least the first intellectual property asset and the second intellectual property asset from the plurality of the intellectual property assets to form a pool of intellectual property assets to be securitized, the pool having a first pool revenue stream including the first asset first revenues and the second asset first revenues and a second pool revenue stream including the first asset second revenues and the second revenue second revenues, the first and second assets being selected so that the first pool revenue stream is at least a first predetermined amount and the second pool revenue is at least a second predetermined amount.

THE REJECTION

Claim 1 is rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claim 1 is rejected under 35 U.S.C. § 103(a) as unpatentable for Moody in view of Keough.

References

Keough et al. ("Keough")	WO 02/37367 A1	May 10, 2002
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Jay H. Eisbruck *Moody's Approach to Rating Music Royalty and Intellectual Property-Backed Transactions: There's No Business Like Show Business* Moody's Investors Service 1–16 (July 2, 1999) (hereinafter "Moody")

ANALYSIS

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claim 1 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, . . . then ask, "[w]hat else is there in the claims before us?" . . . To answer that question, . . . consider the elements of each 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. . . . [The Court] described step two of this analysis as a search for an "inventive concept"—*i.e.*, an element or combination of elements that is

“sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

Alice Corp. Pty. Ltd. v. CLS Bank Int’l, 573 U.S. 208, 217–218 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)) (citations omitted).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. 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.’” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). 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.

In so doing we apply a “directed to” two prong test; 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the judicial exception is integrated into a practical application. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 FR 50, pp 50–57 (Jan. 7, 2019).

The Examiner determines that the claims are directed to securitizing assets and thus is a fundamental economic practice. (Final Act. 4). The Examiner found the processor is only broadly applied to the abstract ideas at a high level of generality and functions in a manner that is routine, conventional, and well-understood in the art. (*Id.*).

The Specification states that the invention relates generally to methods and devices for valuing intellectual property assets. (Spec. 1). Securities based on intellectual property royalties often involve receivables which are not fully known and as such securitization transactions based on intellectual property assets may require extensive analysis. (Spec. 2). Securitization of intellectual property assets in simplified form involves an owner selling certain royalty rights to noteholders, with notes being backed by the future royalty stream. The owner receives an up-front payment and in exchange the owner agrees that the future royalty payments will pay off the principal and the interest due to the noteholder. (Spec. ¶ 6). In the invention, the processor uses a least squares linear regression mathematical method to form groups of assets having more than a minimum total revenue and more than the minimum number of assets. The group that most closely resembles the desired ratio may then be selected to create the pool. (Spec. ¶ 70). The method of creating a pool of intellectual property assets for securitization of the present invention relates to activity connected to commercial and sales interactions between owners of royalty rights and buyers of royalty rights.

Claim 1 recites steps of creating a pool of intellectual property assets and as such is directed to commercial and sales interactions between the owner of the royalty rights and purchaser of the royalty rights. In this regard, claim 1 recites “identifying rights to each of a plurality of intellectual property assets including a first intellectual property asset and a second intellectual property asset.” The rights include “first rights corresponding to a first revenue stream and second rights corresponding to a second revenue stream.” Next revenues in a “first revenue stream associated with the first

intellectual property asset” and a “second revenue stream associated with the second intellectual property asset” are identified. A pool is formed by “selecting, using a processor, at least the first intellectual property asset and the second intellectual property asset.” The first and second assets are selected “so that the first pool revenue stream is at least a first predetermined amount and the second pool revenue is at least a second predetermined amount.”

We thus agree with the Examiner’s findings that claim 1 recites a fundamental economic practice because it relates to creating a pool of intellectual property assets for securitization or sale of rights in those assets. Claim 1 is directed to a certain method of organizing human activities i.e., a fundamental economic practice related to sales activity. *Guidance 52*.

Also, we find the steps of “selecting at least the first intellectual property asset and the second intellectual property asset” from the pool so that the “first pool revenue stream is at least a first predetermined amount and the second pool revenue is at least a second predetermined amount,” (Spec. 19), constitute analyzing information by steps people go through in their minds, or by mathematical algorithms, which without more, is essentially a mental processes within the abstract-idea category. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (claims directed to certain arrangements involving contractual relations are directed to abstract ideas).

Turning to the second prong of the “directed to test”, we note that claim 1 requires a “processor.” The recitation of the word “processor” does not impose “a meaningful limit on the judicial exception, such that the claim

is more than a drafting effort designed to monopolize the judicial exception.” *2019 Revised Patent Subject Matter Eligibility Guidance* at 53.

The Supreme Court stated that:

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement [t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223–224 (alterations in original) (citations omitted).

Instead, “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 225. They do not.

Using a computer to retrieve, select, and apply decision criteria to data and modify the data, as a result, as is recited in claim 1, amounts to electronic data query and retrieval—one of the most basic functions of a computer. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even

if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am. Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

The recitation of a processor does not affect an improvement in the functioning of a computer or other technology. The claim does not recite a particular machine or manufacture that is integral to the claims, and does not transform or reduce a particular article to a different state or thing. *Id.* As such, claim 1 does not include additional elements that integrate the exception into a practical application.

Turning to the second step of the *Alice* analysis, because we find that claim 1 is directed to a fundamental economic practice, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, at 217–218 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

All of the computer functions detailed above are well-understood, routine, conventional activities previously known to the trading industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”).

Considered as an ordered combination, the processor of claim 1 adds nothing that is not already present when the steps are considered separately.

The sequence of data reception-analysis-access/display is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

The claims do not, for example, purport to improve the functioning of the computer itself. As we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out that a client computer is used to perform the steps of claim 1. (*See, e.g.*, Spec. ¶¶ 69). Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea of information access using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, at 226.

We have reviewed all the arguments (Appeal Br. 4; Reply Br. 2--3) Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the processor is not being "broadly applied to the abstract ideas at a high level of generality" but rather a very specific processor. Appeal Br. 4. The claims do not recite a specialized processor. No details about the processor are recited. In addition, the Appellant does not direct our attention to a description in the Specification of a specialized processor. The Specification discloses that the computer may be a client computer which indicates that the processor recited is a general purpose computer. (Spec. ¶ 69). Further, Appellant has not established that the steps of claim 1 which involve identifying data (rights/revenue data) and processing that data by selecting which assets to place in a pool must be performed by a specialized computer. In our view, transmitting and processing data are computer functions that can be performed by any general purpose computer.

The gravamen of Appellant's argument appears to be that the claim requires a general purpose computer to execute the specific recited instructions, which renders the computer a "specialized" processor. In contrast, courts have consistently held that, in a § 101 analysis, mere use of a computer as a tool to execute instructions that are no more than abstract ideas, i.e., what Appellant refers to as a "specific" computer, does not confer patent eligibility on an otherwise ineligible claim. *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (explaining that Federal Circuit cases "have made clear that mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology" because in such cases "the focus of the claims is not on . . . an improvement in computers as tools, but on . . .

independently abstract ideas that use computer as tools”) (internal quotation marks and citations omitted); *see also Guidance*, 84 Fed. Reg. at 55.

In view of the foregoing, we will sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 101.

35 U.S.C. § 103(a) REJECTION

We will not sustain this rejection because we agree with the Appellant that the prior art does not disclose selecting at least the first intellectual property asset and the second intellectual property asset to form a pool of intellectual property assets, *“the first and second assets being selected so that the first pool revenue stream is at least a first predetermined amount and the second pool revenue is at least a second predetermined amount.”* Claim 1 (emphasis added).

The Examiner relies on Keough’s Figure 1 and page 2 for teaching this subject matter. (Final Act. 6). Specifically, the Examiner finds that Keough teaches that various revenue streams may be such that 50% is international, tax-based, 25% is entertainment based) and 25% is (50% health insurance and 50% malpractice). While the Examiner may be correct that Keough teaches that the mix of revenue streams are allocated according to the above criteria, the Examiner has failed to establish that Keough teaches that the allocations are such that the “first and second assets being selected so that the first pool revenue stream is at least a first predetermined amount and the second pool revenue is at least a second predetermined amount” as required by claim 1.

In view of the foregoing, we will not sustain this rejection.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claim 1 under 35 U.S.C. § 101.

DECISION

The decision of the Examiner to reject claim 1 under 35 U.S.C. § 101 is affirmed.

The decision of the Examiner to rejection claim 1 under 35 U.S.C. § 103(a) is not 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED