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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH C. NOVIELLO, MICHAEL SWEETING,
and HOWARD W. LUTNICK¹

Appeal 2017-004763
Application 14/336,217
Technology Center 3600

Before CAROLYN D. THOMAS, KARA L. SZPONDOWSKI, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–20, all the pending claims in the present application. *See* Claims Appendix. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ The Appellants name BGC Partners, Inc. as the real party in interest (App. Br. 3).

The present invention relates generally to managing trading. *See*
Abstract.

Claim 1 is illustrative:

1. A method, comprising:
 - receiving by a workstation trading orders via a communications network from a trading platform, each trading order having an associated price and comprising either a buy order or a sell order;
 - displaying by the workstation, in an electronic display, the received trading orders in trading order stacks, including displaying buy orders in a buy order stack and sell orders in a sell order stack, wherein each of the buy order stack and the sell order stack has a top and wherein the trading orders of the respective trading order stacks are ordered resulting each of the buy order stack and the sell order stack having a top order;
 - as a result of one or more trading orders being removed from a respective one of the trading order stacks resulting in a current top order of the respective trading order stack, comparing by the workstation the price of the current top order to a value;
 - determining by the workstation that the price of the current top order does not differ from the value by more than a threshold value, wherein determining that the price of the current top order does not differ from the value by more than the threshold value results in no restrictive action being taken with respect to the current top order;
 - as a result of one or more additional trading orders being removed from the respective trading order stack, resulting in a new top order of the respective trading order stack, comparing by the workstation the price of the new top order to a comparison value;
 - determining by the workstation that the price of the new top order differs from the comparison value by more than a comparison threshold value, the new top order thereby determined to be an outlying order;
 - as a result of determining that the price of the new top order differs from the comparison value by more than the comparison threshold value, taking by the workstation a restrictive action with respect to the new top order including at least one of:

at least temporarily leaving, within the electronic display, at least one space between the new top order and the top of the respective trading order stack, thereby not promoting within the electronic display the new top order to the top of the respective trading order stack,

at least temporarily not displaying within the electronic display the new top order within the respective trading order stack, and

modifying within the electronic display an appearance of the new top order as compared to other trading orders within the respective trading order stack;

receiving by the workstation a subsequent order having an original price that would trade with the price of the new top order; and

based at least in part on the new top order being an outlying order:

generating by the workstation an alert message regarding the subsequent order, the alert message indicating that the original price of the subsequent order may be a mistaken price;

displaying by the workstation the alert message in the electronic display;

and

preventing by the workstation the subsequent order from trading with the new top order at least until a response to the alert message is received.

Appellants appeal the following rejection:²

Claims 1–20 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence

² The Examiner withdraws the rejection of claims 6 and 16 under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite (Ans. 4).

produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Rejection under § 101

Issue: Did the Examiner err in rejecting the claims for being directed to non-statutory subject matter?

Alice Step One

Alice Corp. Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. 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*, 134 S. Ct. at 2355.

With respect to independent method claim 1, and similarly, apparatus claim 11, the Examiner finds these claims are directed to an abstract idea of “mathematical relationships or formulas for preventing a trader from mistakenly trading with an outlying order” (Final Act. 3).

Appellants challenge the Examiner’s “abstract” determinations by contending that “the Examiner merely makes a conclusion without any evidence or reasoning . . . [t]here is no citation to any similar concept or case as required by the PTO guidelines” (App. Br. 8) and “the claims clearly do not preempt the alleged abstract idea” (*id.*).

In the Answer, the Examiner names several cases to support the Examiner’s finding of an abstract idea (*see* Ans. 2) and notes that “the ‘absence of complete preemption does not demonstrate patent eligibility’” (*id.* at 3). We find that the Examiner has provided a sufficient response

supported by a preponderance of evidence (Ans. 2–3), and thus agree with the Examiner’s conclusion of an abstract idea.

Here, the claimed sequence of steps in claim 1 covers employing a work station to perform functions, such as receiving trading orders, displaying the trade orders, removing trade orders, comparing a price of a top order, determining the price does not differ by more than a threshold, removing additional orders, comparing the price of new top order, determining the price of new top order differs, determining an outlying order, generating an alert message, and taking a restrictive action (*see* claim 1). The collection, analysis, and display of information, including when limited to particular content, is within the realm of abstract ideas. *See, e.g., Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent-ineligible concept”); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011).

Regarding Appellants’ contention that “the claims clearly do not preempt the alleged abstract idea” (App. Br. 8), we agree with the Examiner that the “absence of complete preemption does not demonstrate patent eligibility” (Ans. 3). Stated differently, although 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 (citing

Mayo Collaborative Servs. v. Prometheus Labs., Inc., 132 S.Ct. 1289, 1293 (2012))), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)).

Because the claims are directed to mathematical manipulations, we agree with the Examiner that the claims are directed to an abstract idea.

Alice Step Two

We now turn to the second step of the *Alice* framework: “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*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs.*, 132 S. Ct. at 1294).

The Examiner finds that “[t]he additional limitations comprise . . . insignificant pre-solution activity . . . [and] insignificant post-solution activity (Final Act. 3) and “[t]he analysis under 101 is a matter of law and not evidence The Office recited the additional limitations and explained why they are not significantly more” (Ans. 3–4). The Examiner further finds, *inter alia*, “[i]t is conventional and routine to take restrictive actions when data is determined to be outside of an established norm.” Final Act. 3–4.

Appellants contend that “[t]he Office Action has provided no evidence at all that the limitations merely recite conventional or routine elements” (App. Br. 8–9) and the “rejection does not even mention all of the limitations of all of the claims” (*id.* at 9). Appellants also contend that the claims address the problem of “the user mistakenly [submitting] an order . . . by detecting a possible outlying order [and] visually alerting a user . . .

displaying the order in a particular fashion . . . and preventing the user from trading until a response to the alert message is received” (*id.* at 10), therefore, the claims “recite significantly more than an abstract idea” (*id.* at 11).

We agree with Appellants that the Examiner’s analysis is conclusory and unsupported. The Examiner has *not* set forth with sufficient specificity or provided any finding of fact (*see* Ans. 3–4; *see also* Final Act. 3–4) that the specifically claimed manner of managing trading using alert messages for outlying trading orders is well-understood, routine, or conventional. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018) (“The question of whether a claim element or combination of elements is well-understood, routine, and conventional to a skilled artisan in the relevant field is a question of fact.”).

In other words, the Examiner identifies no support/evidence for the aforementioned findings, in part because of the Examiner’s erroneous view that no factual determination is needed.

Thus, under step two of *Alice*, the Examiner has not properly considered the elements of the claims, both individually and “as an ordered combination,” to determine whether the additional elements transform the Examiner’s asserted abstract idea into a patent-eligible application.

For the above reasons under step two of *Alice*, the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101 is reversed.

DECISION

We reverse the Examiner’s § 101 rejection.

REVERSED