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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HILL FERGUSON¹

Appeal 2017-004901
Application 12/191,788
Technology Center 3600

Before BRADLEY W. BAUMEISTER, MICHAEL J. STRAUSS, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ According to Appellant, the real party in interest is Yodlee.com, Inc. *See* Br. 2.

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a non-final rejection of claims 21–32. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.²

THE INVENTION

The claims are directed to a system and method for a frame-based internet enabled user interface. Spec., Title. Claim 21, reproduced below, is representative of the claimed subject matter:

21. A method for providing a bill management service executed by software distributed to memory of a bill management server connected to the Internet and memory of a computerized device at a user premises subscribing to the service, comprising the steps of;

(a) collecting and aggregating billing information specific to the user by the software at the bill management server by automatically, periodically, navigating to biller web sites, logging in as the user and collecting billing information specific to the user directly from third-party service providers connected to the Internet providing services for the user;

(b) providing a graphic user interface (GUI) to the user by the software at the computerized device to communicate with the bill management service via the Internet, the GUI including a first frame enabling a direct deep-link Internet connection between the user and at least one of the third-party services, wherein the frame is maintained in a first portion of the GUI enabling the user to interact directly at the third party service within the first frame and view a remaining portion of the GUI simultaneously;

² We refer to the Specification, filed Aug. 14, 2008 (“Spec.”); the Non-Final Office Action, mailed Mar. 23, 2016 (“Non-Final Act.”); Appeal Brief, filed May 2, 2016 (“Br.”); and the Examiner’s Answer, mailed Nov. 18, 2016 (“Ans.”).

(c) accessing a second frame in the GUI by the user, the second frame presented in a second portion of the GUI, the second frame having information specific to the user and the at least one third-party service, the information provided by the bill management service; and

(d) accessing the deep-link in the first frame by the user to at least pay a bill directly at the third-party service while using the information provided in the second frame and simultaneously viewing the remaining portion of the GUI.

REFERENCES

The following prior art is relied upon by the Examiner in rejecting the claims on appeal:

Kolling	US 5,963,925	Oct. 5, 1999
Kramer	US 6,327,574 B1	Dec. 4, 2001
Khanna	US 2002/0133605 A1	Sept. 19, 2002
Labrou	US 2004/0098350 A1	May 20, 2004
Allen	US 6,785,891 B1	Aug. 31, 2004

REJECTIONS

The Examiner made the following rejections:

Claims 21–32 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Non-Final Act. 5.

Claims 21–32 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Kolling, Kramer, Khanna, Allen, and Labrou. Non-Final Act. 6–11.

ANALYSIS

Appellant’s contentions are unpersuasive of Examiner error. We adopt as our own (1) the findings and reasons set forth by the Examiner in the Action from which this appeal is taken (Non-Final Act. 2–11) and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (Ans. 2–11), and we concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

35 U.S.C. § 101

Patentable subject matter is defined by 35 U.S.C. § 101, as follows:

[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

In interpreting this statute, the Supreme Court emphasizes that patent protection should not pre-empt “the basic tools of scientific and technological work.” *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). The rationale is that patents directed to basic building blocks of technology would not “promote the [p]rogress of [s]cience” under the U.S. Constitution, Article I, Section 8, Clause 8, but instead would impede it. Accordingly, laws of nature, natural phenomena, and abstract ideas, are not patent-eligible subject matter. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017) (citing *Alice*, 134 S. Ct. at 2354).

The Supreme Court set forth a two-part framework for analyzing subject matter eligibility in *Alice* (134 S. Ct. at 2355). The first step is to

determine whether the claim is directed to a patent-ineligible concept. *Id.* (citing *Mayo*, 566 U.S. at 76–77). If so, then the eligibility analysis proceeds to the second step of the *Alice/Mayo* framework in which we “examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 566 U.S. at 72, 79).

The “inventive concept” may be embodied in one or more of the individual claim limitations or in the ordered combination of the limitations. *Id.* at 2355. The “inventive concept” must be significantly more than the abstract idea itself, and cannot be simply an instruction to implement or apply the abstract idea on a computer. *Id.* at 2358. “[W]ell-understood, routine, [and] conventional activit[ies]’ previously known to the industry” are insufficient “to transform an abstract idea into a patent-eligible invention.” *Id.* at 2359–60 (citing *Mayo*, 566 U.S. at 73).

Alice/Mayo Step 1: Abstract Idea

The Examiner finds “[t]he claim(s) is/are directed to the abstract idea of (i) a fundamental economic practice (i.e., bill management).” Non-Final Act. 5. The Examiner finds the claim limitations are directed to collecting and aggregating billing information, providing a graphic user interface with first and second frames, and paying a bill via a link in the first frame using information provided in the second frame. Ans. 2. The Examiner further

finds the claims at issue are directed to similar concepts found to be abstract in several cited prior cases. Ans. 3.

Rather than contend error in the Examiner's finding that the invention is directed to an abstract idea, "Appellant argues that the Examiner clearly errs when not considering additional elements and functionality, as claimed in [A]ppellant's invention." Br. 8. Accordingly, the Examiner's findings under Step 1 of the *Alice/Mayo* framework are undisputed.

Alice/Mayo Step 2: Inventive Concept

The Examiner finds "[t]he additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry." Non-Final Act. 5. The Examiner concludes "[v]iewed as a whole, these additional claim element(s) do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself." *Id.*

Appellant argues providing multiple frames and deep links³ to third-party web sites provides a graphic user interface (GUI) enabling a user to

³ According to Appellant

[D]eep linking is the use of a hyperlink that links to a specific, generally searchable or indexed, piece of web content on a website (e.g., [.] "http://example.com/path/page"), rather than the website's home page (e.g., [.] "http://example.com/"). For example, the link could be to a bill at a biller's website or a pay bill option directly at the biller web site.

directly transact with the third-party websites while providing information automatically gathered by a user's billing service. Br. 8. According to Appellant, "providing multiple frames within the GUI providing deep links for the user is not a generic computer activity known in the art." *Id.* In particular,

Appellant argues that the claims actually do not focus on the fundamental economic practice, but provide additional software structure via multiple frames with direct deep-linking providing a tool set for a user to access bills directly from vendor sites (via deep-linking) and pay them with information from other windows, all while staying within one GUI (website).

Br. 9.

Appellant argues the pending claims are similar to claim 2 of Example 21 of the July 2015 Update Appendix 1 of the 2014 Interim Guidance Matter Eligibility (hereinafter "Example 21"). According to the Appellant, "[the] incorporation of multiple deep linking frames within a single GUI at a single Web site is far more than merely a generic computer function." Br. 10. Appellant further argues the additional requirements of the claims avoid monopolizing the abstract idea of paying bills and, instead, improve the technology of computer information presentation allowing a user to pay bills while staying at the service web site GUI. According to Appellant, "this is not something a human can do with a paper and pencil." *Id.* The Examiner responds, finding all steps of claim 21 to be known techniques performed by computers and web browsers. Ans. 5.

Appellant's arguments are unpersuasive of Examiner error. We agree with the Examiner in finding the claimed steps, including providing a GUI

Br. 11 (emphasis omitted).

with first and second frames and deep linking, are known techniques that are well-understood, routine and conventional processes performed and information displays provided by computers running conventional web browsers processing hypertext markup language (HTML) web pages. In particular, deep linking is “the use of a hyperlink that links to a specific, generally searchable or indexed, piece of web content on a website . . . rather than the website’s home page.” Br. 11. Therefore, from an HTML perspective, a deep link is the same as any other hyperlink whether the target is designated as a website’s home page or a page on a website other than that designated as the website’s home page. That is, whether the target web page is a home page or otherwise (i.e., a deep link) does not affect the functioning of the HTML code. Such conventional computer processing is insufficient to transform an abstract idea into a patent-eligible invention.

Appellant has not provided sufficient evidence or argument that the target specified by a hyperlink (i.e., a website’s home page or other page) transforms the hyperlink into something that was not well-understood, routine, and conventional. Appellant’s naked assertion to the contrary (Br. 8) is insufficient to persuade us otherwise. Mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record.

Appellant’s reliance on *DDR Holdings* is also unpersuasive. See Br. 9 citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed.

Cir. 2014). The claims in *DDR Holdings* were directed to a “challenge particular to the Internet,” and did not “broadly and generically claim ‘use of the Internet’ to perform an abstract business practice (with insignificant added activity).” *DDR Holdings*, 773 F.3d at 1257, 1258.

For example, in *DDR Holdings*, the claims involved, *inter alia*, “web pages displays [with] at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants.” *Id.* at 1249 (claim 19 of US 7,818,399 B1; issued to Ross, Jr., Oct. 19, 2010). The court held that a claim may amount to more than an abstract idea recited in the claims when it addresses and solves problems *only* encountered with computer technology and online transactions, e.g., by providing (serving) a composite web page rather than adhering to the routine, conventional functioning of Internet hyperlink protocol. *See DDR Holdings*, 773 F.3d at 1257–59. There is nothing similar to *DDR*’s web page with an active link in Appellant’s claim 21. Rather, all that claim 21 requires is first and second frames, the first frame encapsulating a resource from a third-party internet based service and the second a providing user-specific information related to the content provided by the resource. Spec. 5. The recited deep linking only requires reference to a particular web page rather than to a third-party home page. Thus, rather than addressing a particular problem of the Internet, such as a limitation of hyperlink protocol or HTML, the invention uses a standard feature of HTML to provide multiple frames as part of a GUI.

We are also unpersuaded by Appellant’s argument that the invention is similar to Example 21 of the July 2015 Update as providing significantly more than the abstract idea. *See* Br. 10.

First, claim 2 of Example 21 is a hypothetical claim, not an actual claim present in US 7,035,914 B1 that was at issue in *Google Inc. v. SimpleAir, Inc.*, Covered Business Method Case No. CBM 2014-00170 (Jan. 22, 2015), the Board decision on which hypothetical Example 21 is based.

Second, the Board did not hold a claim like claim 2 of Example 21, or any claim in US 7,035,914 B1 for that matter, patent-eligible as a matter of law. Rather, the Board found that the Petitioner had not “shown sufficiently that claims 1–3, 7, and 22–24 [of US 7,035,914 B1] are more likely than not unpatentable as being directed to patent-ineligible subject matter under 35 U.S.C. § 101.” *Id.* at 16. (“Petitioner’s generalized arguments, not directed to the specific language of the challenged claims, are insufficient to show that the claims more likely than not are directed to a patent-ineligible abstract idea.”)

Third, be that as it may, claim 2 of Example 21 is not comparable to what is claimed in the instant appeal. Claim 2 of Example 21 includes the limitation “[an] alert [that] activates [a] stock viewer application to cause the stock quote alert to display on the remote subscriber computer and to enable connection via the URL to the data source over the Internet when the wireless device is locally connected to the remote subscriber computer and the remote subscriber computer comes online.” The Appellant has not explained how claim 21 on appeal contains any comparable limitation.

We are also unpersuaded by Appellant’s argument “the present claims are significantly more than a drafting effort designed to monopolize the exception (paying bills).” Br. 9. 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*, 132 S. Ct. at 1293)), “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) (“[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.”).

Finally, we are further unpersuaded by Appellant’s argument that the claims do not encompass “something a human can do with a paper and pencil.” Br. 9. Whether the abstract idea identified by the Examiner can be performed either mentally or with pencil and paper is relevant to demonstrating the idea is abstract under Step 1 of the *Alice/Mayo* analysis. “A method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011). The technological components of claim 21 requiring more than mental steps or pencil and paper, such as the argued service website GUI, are considered under Step 2 of the *Alice/Mayo* analysis. In the present case, we agree with the Examiner in finding the claims are directed to the abstract idea of “providing bill management service that aggregates billing information specific to the user and allows payment of a bill []directly to []a third-party service,” which can be performed “by a human being (i.e., [using] pencil and paper).” Non-final Act. 2–3.

Moreover, the Federal Circuit has held that claims similar to those at issue here, claims directed to collecting, generating, organizing, and

displaying data, are directed to patent-ineligible abstract ideas. *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097–98 (Fed. Cir. 2016) (“the practices of collecting, analyzing, and displaying data, with nothing more, are practices ‘whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas’”) (citation omitted); *see also, e.g., Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017); *West View Research, LLC v. Audi AG*, 685 F. Appx 923, 926 (Fed. Cir. 2017) (nonprecedential); *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); *cf. also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1368 (Fed. Cir. 2015) (“Indeed, the budgeting calculations at issue here are unpatentable because they could still be made using a pencil and paper with a simple notification device” (internal quotation marks and citations omitted)). In the present appeal, Appellant fails to identify any technological improvement to computer, browser or Internet capabilities as a result of the argued claim limitations.

For the reasons discussed above, Appellant’s contentions are unpersuasive of Examiner error. Accordingly, we sustain the rejection of claims 21–32 under 35 U.S.C. § 101.

35 U.S.C. § 103(a)

Appellant contends the information displayed in Kolling’s windows is provided by the same service providing the interface, not a direct link to a third-party website, as claimed. Br. 10. “Appellant argues that the user of Kolling only transacts with a single service, which is the bill pay service at the interface. No direct deep-link connection exists in the art of Kolling, so

a transaction with a third-party cannot happen, nor is there a suggestion to do so.” Br. 11.

The Examiner finds Kolling’s statement origination workstations (SORG) and statement generation workstation (SGEN) may be located remotely such that “Kolling teaches that a biller or biller service provider [(i.e., third party)] can transmit a statement to a consumer service provider via the Internet.” Ans. 6–7 (citing Kolling col. 4, ll. 62–66, col. 31, ll. 19–34, col. 34, ll. 49–67 and Figs. 3 and 13). According to the Examiner, a “reasonable construction of Kolling would read on linking [by] the use of a hyperlink that links to a specific, generally separable or indexed piece of web content on a web site, as Kolling[’s] biller provides a statement that is generated and transmitted to the GUI at the Consumer Service Provider.” Ans. 7.

Appellant’s contention is unpersuasive of Examiner error. In particular, Appellant fails to provide sufficient evidence or reasoned argument distinguishing the claimed deep link over Kolling’s Internet connection. Appellant emphasizes that “deep linking is the use of a hyperlink that links to a specific, generally searchable or indexed, piece of web content on a website (e.g., [‘http://example.com/path/page’]), rather than the website’s home page (e.g., [‘http://example.com/’]).” Br. 11 (emphases omitted). However, Appellant fails to explain why Kolling’s hyperlinks (*see, e.g.*, Kolling Figs. 11, 12, and 13 and connections to Great Northern Bank) fail to teach or suggest the disputed deep linking, whether directly or subsequent to initially landing on a home page, so as to allow a user to log in, retrieve billing information, etc. Furthermore, Appellant fails to address the Kramer and Allen references, also cited for teaching or

suggesting the disputed deep-link Internet connection. *See* Non-Final Act. 8 (citing Kramer col. 7, lines 16–28; col. 8, lines 1–13) and 9 (citing Allen, Abstract and col. 5, ll. 8–21 and 39–41). It is well established that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Appellant further contends that, because no “direct deep-link connection exists in the art of Kolling . . . a transaction with a third-party cannot happen” as required by step (d) of claim 21, i.e., accessing the deep-link in the first frame by the user to at least pay a bill directly at the third-party service while using the information provided in the second frame and simultaneously viewing the remaining portion of the GUI. *See* Br. 11. Appellant notes that the Examiner’s recitation of the disputed limitation at page 7 of the Non-Final Action does not reflect the amended language of claim 21. *Id.* According to Appellant, the language used by the Examiner in analyzing step (d) fails to emphasize that “Appellant does not claim accessing information in a first frame by using information in a second frame [but, instead,] using information in a second frame to complete a transaction (paying a bill) within the first frame.” Br. 12. Addressing the Allen reference, Appellant argues the reference “teaches in all embodiments that only one html page (frame) can be viewed at a time.” *Id.* (citing Allen Fig. 3).

The Examiner responds, explaining the Non-Final Action addressed the amended claim language with the application of Labrou for teaching the argued requirement of direct user interaction with a third party service

within the GUI and providing user access to pay a bill directly at the third party service. Ans. 7 (citing Non-Final Act. 10). The Examiner further details how the combination of Kramer, Khanna, Allen and Labrou teaches or suggests disputed step (d) of claim 21. Ans. 9–10. The Examiner finds Allen’s ability to display a plurality of HTML pages including frames teaches or suggests the argued simultaneous display of frames. Ans. 10.

Appellant’s contentions are unpersuasive. Initially, having found Kolling teaches or suggests deep-link connections for the reasons discussed above, we disagree with Appellant’s premise and therefore Appellant’s conclusion that, as a result of the argued deficiency, “in the art of Kolling, . . . a transaction with a third-party cannot happen” (Br. 11).

In connection with the Examiner’s reference to claim language appearing prior to the argued amendment and/or paraphrasing of the existing claim language of step (d), Appellant fails to persuade us that the applied art fails to teach or suggest any of the argued limitations. Instead, as indicated by the Examiner (Ans. 7), all limitations were considered and shown to be taught or suggested by the combination of Kramer, Khanna, Allen and Labrou. Ans. 9–10.

Concerning simultaneous display of frames, we agree with the Examiner in finding Allen teaches or suggests this feature. However, even if otherwise, claim 21 does not require the argued simultaneous viewing of frames (*see* Br. 13), only “accessing the deep-link in the first frame by the user to at least pay a bill directly at the third-party service while using the information provided in the second frame and simultaneously viewing the remaining portion of the GUI.” Accordingly, Appellant’s argument is not commensurate in scope with the claim.

For the reasons discussed above, we sustain the rejection of independent claim 21 and, for the same reasons, independent claim 27 under 35 U.S.C. § 103(a) over Kolling, Kramer, Khanna, Allen, and Labrou. Appellant's arguments in connection with dependent claims 24 and 30 (Br. 13–14) are substantially the same as those found unpersuasive in connection with independent claims 21 and 27. Accordingly, the rejection of claims 24 and 30 are likewise sustained together with the rejection of dependent claims 22, 23, 25, 26, 28, 29, 31, and 31, which are not argued separately with particularity.

DECISION

We affirm the Examiner's decision to reject claims 21–32 under 35 U.S.C. § 101.

We affirm the Examiner's decision to reject claims 21–32 under 35 U.S.C. § 103(a).

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED