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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FERNANDO BARSOBA, DAVID T. BRITT, and
ANDREW J. SIMMERING¹

Appeal 2017-005112
Application 13/554,705²
Technology Center 2600

Before ERIC B. CHEN, IRVIN E. BRANCH, and NABEEL U. KHAN,
Administrative Patent Judges.

BRANCH, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's Final Rejection of claims 1–9, 26, and 27. Claims 3, 5, 7, and 8 are indicated to be

¹ According to Appellants, the Real Party in Interest is IBM Corporation. App. Br. 1.

² Related to Application No. 13/361,124 (Appeal No. 2017-005257). *See* App. Br. 1.

allowable if rewritten in independent form. Claims 10–25, 28, and 29 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to generating visualizations of a plurality of conference calls. Spec. Abstract.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method, comprising:
conducting a plurality of related conference calls;
generating a visualization for each conference call; and
sending the visualizations to computing devices of participants of the plurality of conference calls concurrently with the plurality of conference calls.

REFERENCE AND REJECTIONS

Claim 1 stands rejected under 35 U.S.C. § 101 because the claim is directed to an abstract idea without significantly more. Final Act. 2–3.³

Claims 1, 2, 4, 6, 9, 26, and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Palmer (US 5,594,859; Jan. 14, 1997). Final Act. 3–5.

Claims 3, 5, 7, and 8 are objected to as being dependent upon a rejected base claim, but are said to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. *Id.* 3.

³ Should further prosecution ensue, the Examiner might consider whether the remaining claims also are directed to an abstract idea without significantly more and therefore unpatentable under 35 U.S.C. § 101.

OPINION⁴

35 U.S.C § 101 Rejection of Claim 1

We adopt the Examiner’s findings and conclusion that claim 1 is unpatentable as directed to non-statutory subject matter (Final Act. 2–3), and the Examiner’s response (Ans. 2–3) to Appellants’ arguments (App. Br. 7–13), which Appellants do not persuasively rebut (*see generally* Reply Br. 2–4). We highlight the following for emphasis.

Appellants argue “the Examiner cannot and has not explained why the alleged abstract idea ‘corresponds to a concept that the courts have identified as an abstract idea’” because “the Examiner cites to no court decision to support the Examiner’s assertion that the claimed invention is directed to an abstract idea.” Reply Br. 3. Appellants’ arguments do not persuade us of error.

Methods of organizing human activity are abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355–56 (2014). The Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it 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) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”). Similarly, the Federal Circuit has found claims directed to “collecting information, analyzing it, and displaying certain results of the collection and analysis” as directed to a patent-ineligible abstract idea.

⁴ Because Appellants present arguments for claim 1 only (*see generally* App. Br. 7–13, Reply Br. 2–4), our decision with respect to claim 1 is dispositive, and except for our ultimate decision, we do not further address claims 2–9, 26, and 27.

Electric Power Group, LLC, v. Alstom, 830 F.3d 1350, 1353 (Fed. Cir. 2016).

Claim 1’s “conducting a plurality of related conference calls” is directed to organizing human activity. *Alice* 134 S. Ct. at 2355–56. “[G]enerating a visualization for each conference call” “can be performed by human thought alone.” *CyberSource* 654 F.3d at 1373. “[S]ending the visualizations to computing devices of participants of the plurality of conference calls concurrently with the plurality of conference calls” amounts to “collecting information, analyzing it, and displaying certain results of the collection and analysis.” *Electric Power* 830 F.3d at 1353. Accordingly, claim 1 amounts to a mere abstract idea and is patent-ineligible in accordance with Federal Circuit precedence.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). 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 question is whether the implementation of the abstract idea involves more than the performance of well-understood, routine, and conventional activities previously known to the industry.

Claim 1 recites generic computer functions (i.e., “conducting,” “generating,” and “sending”) that are well-understood, routine, and conventional activities previously known to the industry. Nothing in claim 1 purports to improve computer functioning or “effect an improvement in any

other technology or technical field.” *Alice*, 134 S. Ct. at 2359. There is no indication that the computers used in the invention are anything other than general purpose computers. *See, e.g.*, Spec. ¶¶ 27–30.

Moreover, the claim is not adequately tied to “a particular machine or apparatus” and therefore a “process” that applies the abstract idea. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010) (quoting *In re Bilski*, 545 F.3d 943, 954 (C.A. Fed.2008) (en banc) (“an invention is a ‘process’ only if: ‘(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.’”)). The claim does not, for example, require the conduct of the conference calls, the generation of the visualizations, or the sending of the visualizations to involve any “particular machine or apparatus.” We agree with the Examiner that “[t]he cited functions of ‘conducting’, ‘generating’ and ‘sending’ require no more than a generic computer to perform ... generic processor/computer function[s] that are well-understood, routine and conventional.” Ans. 3. Nor does the claim “transform an article.” *Id.* Appellants’ arguments (*see generally* App. Br. 7–13, Reply Br. 2–4) do not persuasively rebut the Examiner’s reasoning.

Accordingly, we sustain the Examiner’s non-statutory subject matter rejection of claim 1.

Anticipation Rejection of Claim 1

We are unpersuaded of error in the Examiner’s rejection of claim 1 as anticipated by Palmer. We adopt the Examiner’s findings that claim 1 is anticipated by Palmer (Final Act. 3–4) and the Examiner’s response to Appellants’ arguments (App. Br. 12–17), which Appellants do not

persuasively rebut (*see generally* Reply Br. 4–9). We highlight the following for emphasis.

Appellants do not persuasively rebut the Examiner’s finding (Final Act. 3 (citing, among other things, Palmer 9:1–27)) that claim 1’s “conducting a plurality of related conference calls” reads on the following from Palmer: “each workstation participating in a particular video teleconference establishes and maintains a two-way video teleconference connection with each other workstation in the teleconference.” Palmer 9:13–17. We agree with the Examiner that the three “two-way video teleconference connection[s]” are themselves “conference calls” that are “related” by virtue of being part of the “particular video conference.” Ans. 5–6. Appellants do not direct us to persuasive evidence that claim 1’s “plurality of related conference calls” precludes Palmer’s plurality of “two-way video teleconference connection[s]” such that the claim reads on the express disclosure of Palmer, as the Examiner finds.

We also note that Palmer describes “a teleconference participant can control what each other participant receives from that workstation, e.g., muting audio or pausing video to certain participants while remaining active to other participants.” Palmer 9:17–20 (cited by the Examiner (*see* Final Act. 3)). This independent functionality with respect to each of the two-way teleconference connections demonstrates that they are themselves separately controllable “conference calls” consistent with the Examiner’s findings. This undermines Appellants’ arguments to the contrary. *See generally* App. Br. 14–17; Reply Br. 4–9.

We also agree with the Examiner that “generating a visualization for each conference call; and sending the visualizations to computing devices of

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participants of the plurality of conference calls concurrently with the plurality of conference calls” reads on the visualizations depicted in Figures 2(c), 26(d), and 26(f) for the reasons stated by the Examiner. Ans. 4–5.

DECISION

In view of the foregoing, we affirm the Examiner’s rejection of or objection to claims 1–9, 26, and 27.

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