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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN DOELLING, MATTHEW FRANCIS, and TIMOTHY JACOBI

Appeal 2017-005684
Application 13/051,814[1]
Technology Center 3600

Before TERRENCE W. McMILLIN, KARA L. SZPONDOWSKI, and SCOTT B. HOWARD, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 3–7, and 9–22. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] According to Appellants, the real party in interest is American International Group, Inc. Br. 1.

THE CLAIMED INVENTION

The present invention relates generally to "a system, method, and computer product for determining workers' compensation claims using an average weekly wage calculator application." Spec. ¶ 2. Independent claim 1 is directed to a computer-implemented system; independent claim 12 is directed to a method; and independent claim 22 is directed to a non-transitory, tangible computer-readable medium. Br. 13, 15, 16.

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

> 1. A computer-implemented system for processing a claimant's workers' compensation claim comprising:
>
> a physical computer-readable medium including an average weekly wage calculating program; and
>
> a processor adapted to execute the average weekly wage calculating program based on claimant's workers' compensation claim contained on the physical computer readable medium;
>
> wherein the average weekly wage calculating program includes a calculating module having computer executable instructions adapted to determine the average weekly wage based upon a predetermined formula using the claimant's wage information and based upon an average daily rate, and the calculating module is adapted to determine the average weekly wage based upon claim information relating to at least one of the benefit state, the date of injury, the claimant's pay cycle, the claimant's employment status, and the duration of time the claimant had been employed on the date of injury.

REJECTION ON APPEAL

Claims 1, 3–7, and 9–22 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Act. 3.

ANALYSIS

35 U.S.C. § 101 Rejection

Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under 35 U.S.C. § 101. In the first step, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept." *Alice*, 134 S. Ct. at 2355.

The Examiner concludes the claimed invention is directed towards "processing a claimant's workers' compensation claim," which is an abstract idea. Final Act. 3. Specifically, the Examiner determines the claimed invention is directed to a "fundamental economic practice and a mathematical formula." *Id.*

Appellants contend that claim 1 is directed to a statutory class, namely a machine (i.e., a computer-implemented system) (Br. 5); claim 12 is directed to a statutory class, namely a process (i.e., a method) (Br. 7); and claim 22 is directed to a statutory class, namely an article of manufacture (i.e., a non-transitory, tangible computer-readable storage medium) (Br. 9–10). As such, Appellants contend the claims are directed to patent-eligible subject matter.

We are not persuaded by Appellants' arguments. We agree with the Examiner that the claims are directed to the abstract idea of "processing a claimant's workers' compensation claim" and specifically a mathematical

formula "which can be done using paper and pencil or using generic computer functions." Ans. 4 (emphasis omitted); *see* Final Act. 3.

Here, the claims are directed to receiving claim information, determining a payment period, receiving wage information for the payment period, and calculating the average weekly wage based on the received claim information and wage information. The claims are directed to the abstract idea of organizing information (i.e., received claim information and wage information) through mathematical calculations (i.e., calculating average weekly wage). *See Digitech Image Technologies, LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed. Cir. 2014) (the "process of organizing information through mathematical correlations" is an abstract idea).

Moreover, the claims are directed to a computerized method for calculating average weekly wage and processing a workers' compensation claim, and uses a computer-readable medium and processor with a calculating program including a calculating module to automate a human activity (i.e., organize data, perform mathematical calculations). Our reviewing court has found that if a method can be performed by human thought (i.e., organize data, perform mathematical calculations), these processes remain unpatentable even when automated (i.e., using a computer-readable medium and a processor to execute the calculating program and calculating module) to reduce the burden to the user. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*,

[409 U.S. 63 (1972)]."). Appellants have not adequately shown the claims are not directed to an abstract idea.

In the second step of *Alice*, we "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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1297–1298 (2012)). In other words, the second step is to "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.'" *Id.* (quoting *Mayo*, 132 S. Ct. at 1294).

Appellants argue that the claimed elements add significantly more to the alleged abstract idea. *See* Br. 5–7; *see also* Br. 8–11. Specifically, Appellants argue that the claims provide a specially-programmed machine that includes an average weekly wage calculating program to improve accuracy, consistency, and compliance in calculating average weekly wage. Br. 5–6 (citing Spec. ¶ 6); *see* Br. 8, 10. Appellants contend the claimed invention significantly improves existing technological systems and processes known at the time of the invention. *Id.* at 6. Appellants further argue the claimed solution is "rooted in computer technology in order to satisfy persistent needs specifically arising in the field of workers' compensation claims, namely determining an average weekly wage for use in processing a claimant's workers' compensation claim." Br. 6; *see also* Br. 8, 10. According to Appellants, the claimed steps are unconventional and the limitations confine the claims to a particular useful application. Br. 7; *see also* Br. 9, 11.

We are not persuaded by Appellants' argument and agree with the Examiner's finding and conclusion that the claimed limitations "require no more than adding insignificant extra-solution activity to the judicial exception, e.g., mere collecting data (e.g. 'receiving pre-defined claim information… receiving wage information') and performing of generic computer functions (e.g. automating mental tasks (defining a set of payment periods… calculating the average weekly wage…))" and that the claimed limitations "are well-understood, routine and conventional activities previously known to the industry." Ans. 4. We further agree with the Examiner that the claimed invention do not provide unconventional steps that improve another technology or technical field. Ans. 4; *see also* Final Act. 3. "[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible." *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701 (2015) (citing *Alice*, 134 S. Ct. at 2359 ("use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions" is not an inventive concept)).

This case is similar to *Electric Power*, in which our reviewing court found the claims patent-ineligible because "[t]he claims at issue do not require any nonconventional computer, network, or display components, or even a 'non-conventional and non-generic arrangement of known, conventional pieces,' but merely call for performance of the claimed information collection, analysis, and display functions 'on a set of generic computer components' and display devices." *Elec. Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed.

Cir. 2016)). Similarly, the claims in this case merely recite the use of generic computer (i.e., a processor) components to gather data (i.e., receive claim information and wage information), and analyze the data (i.e., defining payment periods and calculating average weekly wage).

Appellants' Specification describes the "computing environment 100 can include a number of computer systems, which generally can include any type of computer system based on: a microprocessor, a mainframe computer, a digital signal processor, a portable computing device, a personal organizer, a device controller, or a computational engine within an appliance." Spec ¶ 37. Nothing in the claim or Specification requires that the device must be able to perform any special functions. Instead, the claim merely requires the conventional function of receiving information (i.e., claim information and wage information) and performing a mathematical calculations (i.e., calculating average weekly wage).

The claims, when viewed as a whole, are nothing more than conventional processing functions that courts have routinely found insignificant to transform an abstract idea into a patent-eligible invention. As such, the claims amount to nothing significantly more than an instruction to implement the abstract idea on a generic computer – which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Accordingly, we sustain the Examiner's 35 U.S.C. § 101 rejection of independent claim 1, as well as commensurate independent claims 12 and 22, argued for the same reasons as claim 1, and dependent claims 3–7, 9–11, and 13–21, not separately argued. *See* Br. 7–11.

DECISION

The Examiner's rejection of claims 1, 3–7, and 9–22 under 35 U.S.C. § 101 is 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)(1)(iv).

AFFIRMED