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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HOWARD W. LUTNICK, GLENN D. KIRWIN, JOAN KIRWIN, ANDREW C. GILBERT, and MARY ANN GILBERT

Appeal 2017-006207
Application 13/614,240[1]
Technology Center 3600

Before ALLEN R. MacDONALD, JOSEPH P. LENTIVECH, and MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 24–42, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Technology

According to the Specification, the application relates to "allow[ing] traders to access information on intangible asset futures contracts," such as "future royalties or revenues from artistic works or future salaries of professionals." Spec. Abstract.

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[1] Appellants state that the real party in interest is CFPH, L.P. App. Br. 3.

Illustrative Claim

Claim 24 is illustrative and reproduced below with certain limitations at issue emphasized:

24. An apparatus comprising:

> a server configured to provide access to information describing trading of futures contracts to a plurality of remote computing devices that are configured to engage in futures contract trading; and
>
> *a microwave communication link* configured to communicate the information from the server to the plurality of remote computing devices.

Rejections

Claims 24–42 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 2.

Claims 24–42 stand rejected under 35 U.S.C. § 102(a)(1) as anticipated by Chaganti (US 2005/0080705 A1). Final Act. 2.

Related Case

Appellants note that "[a]n appeal is ongoing in parent application 10/015738" (Appeal No. 2017-005996). App. Br. 3.

ISSUES

1. Did the Examiner err in finding Chaganti discloses "a microwave communication link," as recited in claim 24?

2. Did the Examiner err in concluding that claim 24 was directed to an abstract idea without significantly more under § 101?

ANALYSIS

§ 102

Independent claim 24 recites "a microwave communication link" to communicate the claimed information.

The prior art Chaganti discloses that "there are established secure communications links between the server computer 100 and the client computer 104 *in any one of the secure communications methods known to persons of ordinary skill in the art*." Chaganti ¶ 36 (emphasis added). The Examiner therefore finds that "Chaganti anticipates any one of the secure communications methods known to persons of ordinary skill in the art" and "[a] microwave communication link is one of the secure communications methods that are known to one of ordinary skilled in the art prior to the filing date of this application." Ans. 10.

We agree with Appellants, however, that "[n]owhere in this cited-portion of Chaganti is there any teaching or suggestion of a 'microwave communication link.'" App. Br. 8 (emphasis omitted). "To anticipate a claim, a single prior art reference must expressly or inherently disclose each claim limitation." *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008). Here, a microwave communication link is neither expressly nor inherently disclosed in Chaganti, and the Examiner has not identified any additional reference to show that it would have been obvious to use a microwave communication link.

Accordingly, we are constrained to reverse the Examiner's rejection of independent claim 24 and its dependent claims 25–42 under § 102.

§ 101

To determine patentable subject matter, the Supreme Court has set forth a two part test. *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). In the first step, we determine whether the claims are "directed to" any patent-ineligible concepts of "laws of nature, natural phenomena, and abstract ideas." *Id.* In the second step, we "consider the elements of each claim both individually and as an ordered combination" in search of "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.* (quotations omitted).

Here, Appellants argue that the Examiner "completely ignores the microwave communication link element of the claim." Reply Br. 5. We agree with Appellants that the Examiner has not addressed the "microwave communication link" limitation in the § 101 analysis. For the second step of the *Alice* inquiry, the Federal Circuit has recently held that "[w]hether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018). On this record, the Examiner has not yet made such a determination for the "microwave communication link."

Accordingly, we do not sustain the Examiner's rejection of independent claim 24 and its dependent claims 25–42 under § 101.

DECISION

For the reasons above, we reverse the Examiner's decision rejecting claims 24–42.

REVERSED