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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/448,268	04/16/2012	Lynn Ann Casey	0095-0142C1	4875
113123	7590	10/31/2018	EXAMINER	
Harrity & Harrity, LLP 11350 Random hills road Suite 600 Fairfax, VA 22030			MCCORMICK, GABRIELLE A	
			ART UNIT	PAPER NUMBER
			3629	
			NOTIFICATION DATE	DELIVERY MODE
			10/31/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LYNN ANN CASEY and MAURINE T. SHIELDS

Appeal 2017-006434
Application 13/448,268¹
Technology Center 3600

Before JOHNNY A. KUMAR, JENNIFER S. BISK, and SCOTT E. BAIN,
Administrative Patent Judges.

BAIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 59–80, which constitute all of the claims pending in the application. Claims 1–58 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Accenture Global Services Limited as the real party in interest. App. Br. 3.

STATEMENT OF THE CASE

The Invention

The invention relates to national border enforcement, and particularly, to an “integrated” border management solution utilizing a computer architecture connecting the various administrative and law enforcement entities responsible for border security. Spec. ¶¶ 2–3. According to Appellants, the invention assists coordination among these entities, and facilitates the “interchange of information” in order to provide a more “complete view of a particular situation for assessing border management decisions.” *Id.* ¶¶ 5–6.

Claims 59, 65, and 73 are independent. Claim 59 is illustrative of the invention and the subject matter of the appeal, and reads as follows:

59. A computer-implemented method for managing a border via a management application architecture on a computer, the method comprising:

collecting, by the computer, case *data* via a set of access channels connected to a set of core applications for standard border management functions in a shared applications architecture,

the set of access channels including at least one access channel that connects the computer to a plurality of devices located in geographically dispersed locations via a network,

a channel specific interface being provided between each access channel, of the set of access channels, and the set of core applications,

the set of core applications including a set of case management applications, a process imports application, and one or more investigation applications, and

the case data including a plurality of alert data;

storing, by the computer, the collected case *data* in an integrated border management database which is stored in a centralized location and accessible by the set of core applications via the set of access channels,

the channel specific interface restricting access to only authorized core applications, of the set of core applications, and authorized collected case data,

the integrated border management database and the set of access channels being included in a netcentric technology architecture that provides scalability as a border management environment evolves;

receiving, by the computer and from a device of the plurality of devices located in geographically dispersed locations via the netcentric technology architecture, *identification information* regarding a passenger or goods arrived at the border;

determining, by the computer and in real-time, whether the identification information matches at least a piece of alert *data* stored in the integrated border management database; and

sending, by the computer and to the device of the plurality of devices located in geographically dispersed locations, *an alert* via at least one access channel, of the set of access channels included in the netcentric technology architecture, based on a determination by the computer that the identification information matches at least a piece of alert data stored in the integrated border management database.

App. Br. 21–22 (Claims App.) (emphases added).

The Rejection on Appeal

Claims 59–80 stand rejected under 35 U.S.C. § 101 as directed to ineligible subject matter. Final Act. 2–6.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments presented in this appeal. Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See*

37 C.F.R. § 41.37(c)(1)(iv). On the record before us, we are not persuaded the Examiner erred. We adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner's Answer, and provide the following discussion for highlighting and emphasis.

Rejection Under 35 U.S.C. § 101

Appellants argue the Examiner erred in rejecting the claims as directed to ineligible subject matter, namely, the abstract idea of border management (including the use of rules to determine actions in border management).² App. Br. 10–13; Final Act. 2. Specifically, Appellants contend that the Examiner improperly relied on an overly “broad characterization of the claims,” that the claims are analogous to other claims found patent-eligible by the Federal Circuit in other cases, and that even if the claims include an abstract idea, they also recite “significantly more” than the abstract idea. App. Br. 10–18; Reply Br. 2–10. For the following reasons, however, Appellants' arguments do not persuade us of error.

Section 101 of the Patent Act provides “[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.” 35 U.S.C. § 101. The Supreme Court has long held that this provision contains an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589–590 (2013)). The

² Appellants argue all claims on appeal as a group, and we choose claim 59 as representative of the group. 37 C.F.R. § 41.37(c)(iv).

Court has set forth a two-part inquiry to determine whether this exception applies. First, we must “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* at 2355. Second, if the claims are directed to one of those patent-ineligible concepts, 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.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–78 (2012)). Put differently, we must search the claims for an “inventive concept,” that is, “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*, 566 U.S. at 72–73).

We begin with step one of *Alice*. As the Examiner finds, claim 59 is directed to a method (via computer) of border management including steps of “collecting” data, “storing” the collected data, “receiving” further data (information), “determining” data matches, and “sending” data (an alert). Final Act. 2–3; Ans. 4; App. Br. 21–22 (Claims App.). It is well established that data gathering and data manipulation encompass an abstract idea. *See, e.g., Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“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”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

Although claim 59 recites manipulation of a particular type of data (border management), and applies certain rules in manipulation and storage,

these factors make it no less abstract. *Ans. 2* (citing *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011) (“method for verifying the validity of a credit card transaction over the Internet,” including collecting data and applying algorithms or rules, is “an unpatentable abstract idea”); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (claims directed to dynamically managing eXtensible Markup Language (‘XML’) data] constitute abstract idea of collecting, displaying, and manipulating data.”)); *see also 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).

Appellants argue that the Examiner has “oversimplif[ied]” claim 59, and that it is analogous to the claims found patent-eligible in *McRO*, *Enfish*, and *DDR*. *App. Br. 10–12* (citing *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)); *Reply Br. 5–9*. The claims in *Enfish*, however, were directed to a “specific improvement to the way computers operate,” i.e., an improved database configuration that permitted faster searching for data. *Enfish*, 822 F.3d at 1330–33, 1336. Appellants’ claim 59 is not directed to any advance in hardware or software that, for example, causes a computer to operate faster or more efficiently. Similarly, Appellants do not explain how claim 1 allegedly is analogous to the claims in *McRO*, which involved a “technological improvement over the existing, manual 3–D animation techniques,” *McRO*, 837 F.3d at 1316, or the claims

in *DDR*, which were “necessarily rooted in computer technology” and solved a problem specific to e-commerce, *DDR*, 773 F.3d at 1257.

We are also unpersuaded by Appellants’ argument that the claims do not preempt the entire field of “providing information regarding border management.” App. Br. 19. Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *FairWarning IP*, 839 F.3d at 1098 (quoting *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), *cert. denied*, 136 S. Ct. 701, 193 (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.”). Where, as here, “a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, . . . preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics*, 788 F.3d at 1379.

Accordingly, Appellants have not persuaded us of error in the Examiner’s analysis under *Alice* step one, and we proceed to step two.

In step two of *Alice*,

we must 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. A claim that recites an abstract idea must include “additional features” to ensure “that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].”

Alice Corp., 134 S. Ct. at 2357 (citations omitted). Much of Appellants’ argument under step two overlaps with step one, and is unpersuasive for the reasons discussed above. App. Br. 15–17; Reply Br. 3–4. Appellants

further argue that the invention relies upon unconventional computer technology which is “scalable” and communicates in “real time.” App. Br. 17–18. Appellants’ Specification, however, describes the computer components in generic, conventional terms such as “business architecture,” “application architecture,” “technology architecture,” “infrastructure,” “core applications,” and “channels.” See, e.g., Spec. ¶¶ 44, 46, 59. The Specification further states that multiple channels “provide the ability to access” the applications and data resources via various generic electronic devices, “such as computer workstations . . . , laptops . . . , as well as mobile computing devices.” *Id.* ¶ 67. The use of such generic computing elements “do[es] not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning*, 839 F.3d at 1096 (citing *DDR Holdings*, 773 F.3d at 1256); Ans. 9–10.

Appellants argue claim 59 includes limitations beyond “what is well-understood, routine, and conventional in the field,” but as discussed above, the claim merely recites collecting, processing, storing, and comparing various bits of data. Final Act. 2. In particular, Appellants’ claim 59 lacks any limitations directed to an improved computer system, processor, memory, network, database, or Internet. Appellants further assert the recited data processing features are not conventional “at least because . . . the claimed solution [is] novel and nonobvious.” App. Br. 18–19. The purported “novelty of any element or steps in a process, or even of the process itself, is of no relevance,” however, “in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981); *Two-Way Media Ltd. v. Comcast Cable Comm., LLC*, 874 F.3d

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1329, 1340 (Fed. Cir. 2017) (“[e]ligibility and novelty are separate inquiries”).

Appellants, therefore, do not persuade us the Examiner erred in the second step of the *Alice* analysis.

For the foregoing reasons, we sustain the rejection of claims 59–80 as directed to ineligible subject matter.

DECISION

We affirm the Examiner’s decision rejecting claims 59–80.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED