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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PHILIP S. LANGRIDGE

Appeal 2017-006608
Application 13/412,759¹
Technology Center 3600

Before ANTON W. FETTING, BRUCE T. WIEDER, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–8 and 26–38. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held May 14, 2019.

We AFFIRM.

¹ According to Appellant, the real party in interest is BGC Partners, Inc. (Appeal Br. 2.)

CLAIMED SUBJECT MATTER

Appellant's invention relates to "a system and method for providing a customizable trading display of market data." (Spec. 3, ll. 2–3.)

Claims 1, 26, and 34 are the independent claims on appeal. Claim 1 is illustrative. It recites (some paragraphing added):

1. A method comprising:
 - selecting, via a processor, at least two quadrants from a plurality of quadrants,
 - in which each quadrant display [sic] a benchmark instrument and a plurality of non-benchmark instruments that is based on the benchmark instrument;
 - in which the at least two quadrants comprises a first quadrant having a first type of benchmark instrument and a second quadrant having a second type of benchmark instrument that differs from the first type of benchmark instrument;
 - retrieving, from a remote device, market data for each of the selected at least two quadrants, in which the remote device is in electronic communication with the processor over a network;
 - and
 - generating, via the processor, a customizable display that comprises the at least two quadrants, in which each of the at least two quadrants is populated with the retrieved market data.

REJECTION

Claims 1–8 and 26–38 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

"Whoever 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. Section 101, however, “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Alice applies a two-step framework, earlier set out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* at 218. If the claims are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, we apply a “directed to” two prong test to: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” See USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

Here, the Examiner determines that claim 1 is directed to the abstract idea of “organizing human activities,” and, in particular, “providing a customizable trading display of market instrument data.” (Answer 4; *see also* Final Action 3.) The Examiner also determines that “[t]he concept of providing a customizable trading display of market instrument data as recited in the claim can be performed manually or by using a ‘processor’ and is similar to the kind of ‘organizing human activity’ at issue in Alice Corp.” (Final Action 3.)

Appellant argues the “the Office Action fails to identify where this allegedly abstract idea is recited in the claims” and that “[t]he Office Action also fails to establish, with evidence, that the claims recite an abstract idea.” (Appeal Br. 7.)

Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant

technology] or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* 2019 Guidance at 54–55. There is no requirement that the abstract idea be recited in the claim *ipsis verbis*. *See Alice*, 573 U.S. at 218, 213 n.2.

The Specification provides evidence as to what the claimed invention is directed. In this case, the Specification discloses that the invention relates to “a system and method for providing a customizable trading display of market data” (Spec. 3, ll. 2–3), and that the “trading display . . . may be customized according to a trader’s needs or wishes” (*id.* at 3, ll. 28–30). Claim 1 provides further evidence. Claim 1 recites “selecting . . . at least two quadrants from a plurality of quadrants, in which each quadrant display[s] a benchmark [financial] instrument and a plurality of non-benchmark [financial] instruments,” “retrieving . . . market data for each of the selected at least two quadrants,” “and generating . . . a customizable display that comprises the at least two quadrants.” In other words, claim 1 is directed to the abstract idea of certain methods of organizing human activity, in this case, commercial or legal interactions, by providing a display of financial information. *See Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) (“As a general rule, ‘the collection, organization, and display of two sets of information on a generic display device is abstract.’ *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1345 (Fed. Cir. 2018)”). This is accomplished by selecting information, retrieving information, and generating a display of information.

Although we and the Examiner describe, at different levels of abstraction, to what the claims are directed, it is recognized that “[a]n abstract idea can generally be described at different levels of abstraction.”

Apple, Inc. v. Ameranth, Inc., 842 F.3d 1229, 1240 (Fed. Cir. 2016). That need not and, in this case does not, “impact the patentability analysis.” *See id.* at 1241.

Nor do we see how the recitation of a generic processor, remote device, and network, even in conjunction with the recited functions, “ensure[s] ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Alice*, 573 U.S. at 221 (brackets in original) (quoting *Mayo*, 566 U.S. at 77.) Moreover, the limitations of claim 1 do not recite implementation details. “They do not claim a particular way of programming or designing the software to create [the claimed customizable display] that has [the recited] features, but instead merely claim the resulting [method].” *Apple, Inc.*, 842 F.3d at 1241.

In view of the above, we are not persuaded that the Examiner erred in determining that claim 1 is directed to an abstract idea.

Step two of the *Alice* framework has been described “as a 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.’” *Alice*, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 72–73).

Appellant argues:

Exemplary claim 1 does recite “significantly more” than simply “providing a customizable trading display of market instrument data.” Claim 1 specifies an interface screen comprising various specific items. The Office Action has not shown how this feature (alone or in combination with other features) is not novel and non-obvious, and the Office Action has not explained how this feature (alone or in combination with other features) “amounts to mere instructions to implement the abstract idea on a computer.”

(Appeal Br. 9–10.)

Appellant’s argument relies on the ineligible concept itself to establish that the claims recite an inventive concept. But “[i]t has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

With regard to Appellant’s argument that the Examiner has not shown that the combination of features is not novel and nonobvious, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance 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).

In view of the above, we do not find Appellant’s arguments persuasive.

Taking the claim elements separately, the functions performed by the processor, remote device, and network at each step are purely conventional. Using computer components to receive and display information are basic computer functions. Moreover, the Specification discloses that the invention can be implemented using generic computer components. (*See* Spec. 10, l. 24–11, l. 2.) In short, each claim step does no more than require generic computer components to perform generic computer functions. *See Elec. Power Grp.*, 830 F.3d at 1356 (The claims “do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept”)

Appellant also argues that “the Office Action fails to make any analysis or showing of any kind concerning preemption.” (Appeal Br. 11.) We do not find this argument persuasive of error.

Preemption is not a separate test. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). In other words, “preemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellant also seeks to analogize claim 1 to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). (Appeal Br. 12.) Appellant argues that, like the claims in *DDR Holdings*, “the present claims solve a problem rooted in computer technology to improve the functionality of trader workstations by providing a customizable trading display of market data.” (*Id.*)

We disagree. The asserted improvement is to a method of organizing human activity, and, in particular, to a business practice regarding data collection and display using generic computer components performing generic computer functions. (*See, e.g.*, Spec. 1, ll. 5–6.) In short, “[t]hese claims in substance [are] directed to nothing more than the performance of an abstract business practice . . . using a conventional computer. Such claims are not patent-eligible.” *DDR Holdings, LLC*, 773 F.3d at 1256.

Considered as an ordered combination, the computer components of Appellant’s method add nothing that is not already present when the steps are considered separately. The claims do not, for example, purport to

improve the functioning of any computer component itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims amount to nothing significantly more than an instruction to apply the abstract idea using generic computer components. That is not enough to transform an abstract idea into a patent-eligible invention. *Alice*, 573 U.S. at 225–26.

In the Reply Brief, Appellant seeks to analogize claim 1 to the claims in *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017). (Reply Br. 9–11.) Appellant argues that “[a]s with the patents upheld in [*CQG*], Applicants’ [sic] claimed subject matter is also drawn to a graphical user interface that improves the functionality of a trader’s view of the relevant markets and thus improves trader efficiency, thereby overcoming disadvantages of prior systems.” (*Id.* at 10.)

In the claimed method in *CQG*, “bid and asked prices are displayed dynamically along the static display, and the system pairs orders with the static display of prices and prevents order entry at a changed price.” *CQG*, 675 F. App'x at 1003. The court determined that “[t]he claims require a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface’s structure that is addressed to and resolves a specifically identified problem in the prior state of the art” of graphical user interface devices. *Id.* at 1004.

Appellant does not explain how the claimed invention, e.g., “pairs orders with the static display of prices and prevents order entry at a changed price.” *See id.* at 1003. Nor does Appellant persuasively argue how the claimed invention “resolves a specifically identified problem in the prior state of the art” of graphical user interface devices. *See id.* at 1004.

Moreover, in *IBG*, where “[t]he method steps require ‘displaying’ a plurality of bid and offer indicators along a ‘scaled axis of prices,’ ‘receiving market information,’ displaying that information along the axis, and ‘displaying’ information pertaining to a user’s order,” the Federal Circuit determined that “[t]his essentially describes receiving information . . . and displaying that information. ‘[W]e have treated collecting information, including when limited to particular content (which does not change its character as information) as within the realm of abstract ideas.’” *IBG*, 921 F.3d at 1092 (quoting *Elec. Power Grp.*, 830 F.3d at 1353). The additional fact that a claim “also recites sending an order by ‘selecting’ and ‘moving’ an order icon” did not change the “determination that the claims are directed to an abstract idea.” *Id.*

Like claim 1 here, the claims in *IBG* merely “recite a purportedly new arrangement of generic information that assists traders in processing information more quickly.” *Id.* at 1093; *see also Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) (“[T]he claims here fail because arranging information along an axis does not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem.”).

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 101.

With regard to claims 2–8 and 26–38, “Appellants [sic] note that each claim recites different subject matter. Accordingly, Appellants [sic] request that each claim and its recitations, considered individually and in combination with other recitations of the claim and/or any parent claims, be considered separately for purposes of this Appeal Brief.” (Appeal Br. 12.)

The Examiner answers, and we agree, that “the dependent claims 2-8, 27-33 and 35-38 do not resolve the issues raised in the independent claim 1. Accordingly, claims 2-8, 26-38 are rejected as ineligible for patenting under 35 U.S.C. 101 based upon the same analysis.” (Answer 5.)

Appellant points to no language in any of claims 2–8 and 26–38 that persuade us that the Examiner erred in determining that no language in those claims resolves the issues raised in the Examiner’s rejection of claim 1. (*See* Appeal Br. 12–13; *see also* Reply Br. 7–8.) Therefore, we do not find this argument persuasive of error.

Appellant’s other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive of error. (*See* 2019 Guidance at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R–08.2017 of the MPEP (published Jan. 2018) should not be relied upon.”).)

DECISION

The Examiner’s rejection of claims 1–8 and 26–38 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED