UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN H. SAMUELS[1]

Appeal 2017-006883
Application 14/059,122
Technology Center 3600

Before JAMES R. HUGHES, JENNIFER S. BISK, and
SCOTT B. HOWARD, *Administrative Patent Judges.*

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the
Examiner's decision rejecting claims 1–15, which constitute all the claims
pending in this application. Final Act. 1–2.[2] We have jurisdiction under
35 U.S.C. § 6(b). We affirm.

Appellant's Invention

The invention "relates generally to life insurance policies, and more particularly, to a life insurance option that matures into a deferred life insurance policy later in life" (Spec. 1:2–4). More specifically, the deferred death benefit determination process (method) receives and stores health data (data representing health of an insured), information indicating if and when payments have been made, and information indicating time of death of the insured. The process determines payment amounts (a first payment amount to purchase an option to purchase a deferred first death benefit and a second payment to exercise the option to purchase the deferred first death benefit) by comparing the stored data to a set of predetermined criteria. The process compares the time of death of the insured to the expiration date of a first period and the start of a second period, and determines whether the deferred first death benefit is will be provided. When the time of death of the insured is before the expiration date of the first period, the deferred first death benefit will not be provided. When the time of death of the insured is after the start of the second period, the deferred first death benefit will be provided. The process also determines an amount of the deferred first death benefit by comparing the stored data to the set of predetermined criteria. Spec. 2:25–5:9, 7:8–8:19, Abstract.

Representative Claim

Independent claim 1, reproduced below, further illustrates the invention:

> 1. A method, performed on a computer, of providing a deferred first death benefit that becomes effective later in life, the computer comprising a processor and a memory, the method comprising;

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the processor receiving data representing health of an insured from the insured, the processor storing the data in the memory;

wherein the processor determines an amount of at least one first payment to purchase an option to purchase a deferred first death benefit and at least one second payment to exercise the option to purchase the deferred first death benefit, by the processor comparing the stored data to a set of predetermined criteria, the processor determining a degree of closeness between the stored data and the predetermined set of criteria, and the processor determining that the amounts of the at least one first payment and the at least one second payment are low if the degree of closeness is low, and the amounts of the at least one first payment and the at least one second payment are high if the degree of closeness is high;

the processor receiving information indicating that the insured has made the at least one first payment during a first period, wherein the first period has a predetermined expiration date;

the processor receiving information indicating that the insured has made the at least one second payment either before or during a second period which follows the first period;

the processor receiving information indicating time of death of the insured upon death of the insured; and

the processor comparing the time of death of the insured to the expiration date of the first period and the start of the second period, the processor determining that the deferred first death benefit is not to be provided when the processor determines that the time of death of the insured is before the expiration date of the first period, or the processor determining that the deferred first death benefit is to be provided when the processor determines that the time of death of the insured is after the start of the second period,

wherein the processor determines an amount of the deferred first death benefit by comparing the stored data to the set of predetermined criteria, the processor determining a degree of closeness between the stored data and the predetermined set

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of criteria, the processor determining that the amounts of the
deferred first death benefit is high if the degree of closeness is
low, and the amount of the deferred first death benefit is low if
the degree of closeness is high.

Rejection on Appeal

The Examiner rejects claims 1–15 under 35 U.S.C. § 101 as being
directed to patent-ineligible subject matter.[3]

ISSUE

Based upon our review of the record, Appellant's contentions, and the
Examiner's findings and conclusions, the issue before us follows:

Did the Examiner err in finding Appellant's claims were directed to
patent ineligible subject matter under 35 U.S.C. § 101?

ANALYSIS

Appellant argues independent claim 1 and dependent claims 2–15
together as a group with respect to the § 101 rejection. *See* Appeal Br. 2–10.
We select independent claim 1 as representative of Appellant's arguments
with respect to claims 1–15. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner rejects the claims (claim 1) as being directed to patent-
ineligible subject matter in that "[c]laim 1 is directed to the abstract idea of
providing a deferred first death benefit that becomes effective later in life,
which is similar to the concept of comparing new and stored information and

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[3] The Examiner only discusses independent claim 1 in the § 101 rejection
(*see* Final Act. 2–3), but lists claims 1–15 as being rejected (*see* Final
Act. 1). Appellant acknowledges claims 1–15 are rejected under 35 U.S.C.
§ 101. *See* Appeal Br. 2. Accordingly, we correct the Examiner's harmless
error and modify the grounds of rejection for clarity and consistency to
include all pending claims 1–15.

using rules to identify options. The concept of 'providing a deferred first death benefit that becomes effective later in life' is described by the receiving, determining and comparing steps in claim 1." Final Act. 2. The Examiner also determines "[c]laim 1 does not include additional elements that are sufficient to amount to significantly more than the judicial exception" in that the recited "generic computer components" perform "generic computer functions" such as receiving data or information, comparing data, and determining amounts "that are well-understood, routine, and conventional activities previously known to the industry." Final Act. 2. Further, the Examiner explains the steps recited in claim 1 correspond to "concepts identified as abstract ideas by the courts, such as 'an idea of itself' in Alice." Ans. 3–4 (citing *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950, 955 (Fed. Cir. 2014) and *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)).

Appellant contends that "[t]he Examiner does not establish that the appealed claims are *prima facie* directed to a patent-ineligible concept at least because the Examiner does not set forth a sufficient evidentiary basis . . . that the appealed claims are directed to a *judicially-identified* exception to patentable subject matter." Appeal Br. 2; *see* Appeal Br. 3–5; Reply Br. 2–3. Appellant also contends the claims "are not directed to an abstract idea" Appeal Br. 5; *see* Appeal Br. 5–9; Reply Br. 2–4. Appellant further contends "the appealed claims recite *significantly more* than 'providing a deferred death benefit' and are thus directed towards patent-eligible subject matter" (Appeal Br. 6), in that "the claims recite a deferred death benefit that must be purchased in a first period and paid for again in the second period, with amounts of payments as well as the amount of the benefit itself being

based on a degree of closeness between the insured's health at the time of purchase and predetermined criteria" (Appeal Br. 7). *See* Appeal Br. 5–9; Reply Br. 2–4.

Under 35 U.S.C. § 101, a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The Supreme Court has "long held that this provision 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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 77–80 (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*, 134 S. Ct. at 2355. Assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or composition of matter, the first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts" (*id.*), e.g., to an abstract idea. For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered "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*, 566 U.S. at 78–79). This second step is described as "a search for an 'inventive concept'—*i.e.*, an element or combination of elements that is '. . . significantly more than . . . the [ineligible concept] itself.'" *Id.* at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Court acknowledged in *Mayo*, that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Alice Step 1 Analysis

Turning to the first step of the eligibility analysis, "the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1335–36. "The abstract idea exception prevents patenting a result where 'it matters not by what process or machinery the result is accomplished.'" *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O'Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1853)). "We therefore look to whether the claims . . . focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO*, 837 F.3d at 1314.

The Examiner determines independent claim 1 is directed to the abstract idea of "providing a deferred first death benefit that becomes effective later in life" (Final Act. 2) because the abstract concept is described by steps of "receiving, determining and comparing" data, which are similar to "comparing new and stored information and using rules to identify options" (Final Act. 2), and "receiving data" and "analyzing/comparing/determining data," which are similar to "an idea of itself" (Ans. 4 (citing *Alice*, *Smartgene*, and *Electric Power Group*)). Conversely, Appellant attacks the Examiner's determinations as being an inaccurate characterization, lacking sufficient explanation, and lacking sufficient evidentiary support and, thus, the Examiner's reasoning and analysis do not include sufficient substance to rise to the level of a prima facie showing. *See* Appeal Br. 2–5; Reply Br. 2–4. We agree with the Examiner that Appellant's claim 1 (and the other pending claims) are directed to patent-ineligible abstract ideas or concepts.

With respect to Appellant's prima facie case and evidentiary contentions, Appellant misconstrues the relevant law and precedent. The Federal Circuit has repeatedly noted that "the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production." *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). Therefore, the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, "together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application." *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir.

2011) (internal quotations omitted). Thus, a prima facie rejection need only set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*

Here, in rejecting the claims (in particular claim 1) under 35 U.S.C. § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO's "2014 Interim Guidance on Patent Subject Matter Eligibility," 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the rejection was made, i.e., on Nov. 6, 2015. The Examiner notified Appellant of the reasons for the rejection "together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application." 35 U.S.C. § 132. *See* Final Act. 2–5. Contrary to Appellant's assertions, in doing so, the Examiner set forth a prima facie case of unpatentability such that the burden of production shifted to Appellant to demonstrate that the claims are patent-eligible.

To the extent Appellant argues that evidentiary support is required under the first part of the *Alice* eligibility test to establish a prima facie case of patent-ineligibility. *See* Appeal Br. 2–5; Reply Br. 2–3. We are aware of no controlling precedent that requires the Office to provide factual evidence to support a finding that a claim is directed to an abstract idea.

With respect to Appellant's contentions that the Examiner mischaracterized or over-simplified the claims—that the claims recite more than the purported abstract concept and "merely *involve* the alleged abstract idea" (Appeal Br. 7; *see* Appeal Br. 5–9)—claim 1 recites a method that: receives and stores in memory data/information (data representing health of an insured); analyzes (compares) the stored data to a set of predetermined

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criteria; analyzes and manipulates data to determine a degree of closeness between the stored data and the predetermined set of criteria, as well as an amount of a first (option purchase) and a second (option exercise) payment for a deferred death benefit based on the degree of closeness; receives additional information (indicating the insured has made the first payment during a first period, indicating the insured has made the second payment either before or during a second period, and indicating time of death of the insured); and analyzes (compares) the additional received information (compares the time of death of the insured to the expiration date of the first period and the start of the second period) to a to determine whether to pay the deferred death benefit; analyzes and manipulates data to determine a degree of closeness between the stored data and the predetermined set of criteria, as well as an amount of the deferred death benefit based on the degree of closeness. In sum, as the Examiner finds, claim 1 is directed to "providing a deferred first death benefit" (Final Act. 2), and amounts to receiving, analyzing, and manipulating information (receiving and comparing data, as well as determining values from the comparisons), which is "an idea of itself," i.e., an abstract idea. *See* Final Act. 2–3; Ans. 3–4.

Although we could characterize claim 1 with more detail, for example, as being directed to "a deferred death benefit that must be purchased in a first period and paid for again in the second period, with amounts of payments as well as the amount of the benefit itself being based on a degree of closeness between the insured's health at the time of purchase and predetermined criteria" (Appeal Br. 7), a more succinct characterization (as proffered by the Examiner) does not alter the eligibility analysis. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016) ("An

abstract idea can generally be described at different levels of abstraction. . . .
The Board's slight revision of its abstract idea analysis does not impact the
patentability analysis.").

Utilizing the above-identified characterization, we analyze whether
claim 1 is directed to an abstract idea. Instead of using a fixed definition of
an abstract idea and analyzing how claims fit (or do not fit) within the
definition, "the decisional mechanism courts now apply is to examine earlier
cases in which a similar or parallel descriptive nature can be seen — what
prior cases were about, and which way they were decided." *Amdocs (Isr.)
Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing
Elec. Power Grp., 830 F.3d at 1353–54). As part of this inquiry, we must
"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).

Here, Appellant's claims generally, and independent claim 1 in
particular, relate to receiving, collecting and communicating information,
analyzing the information (comparing stored data to criteria), and
analyzing/manipulating information to determine closeness as well as
payment and benefit values based on the closeness) (*see* discussion *supra*).
That is, Appellant's claims relate to receiving, collecting, analyzing,
manipulating, and communicating data utilizing un-recited processes or
algorithms and to provide a deferred death. Therefore, the claims broadly
recite receiving, collecting, analyzing, manipulating, and communicating
information (data) relating to insurance benefits. *See* Abstract; Spec. 2:25–

5:9. This is consistent with how Appellant describes the claimed invention. *See* Appeal Br. 1–2 (citing Spec. 7:8–8:19).

Also, the present claims are analogous to a number of cases in which courts have identified similar claims as encompassing abstract ideas. Our reviewing court has held that abstract ideas include gathering, organizing, analyzing, and manipulating information. *Elec. Power Grp.*, 830 F.3d at 1354 (finding claims directed to a "combination of . . . abstract-idea processes . . . of gathering and analyzing information" to be abstract). Similarly, our reviewing court has held that abstract ideas include gathering, organizing, analyzing, and storing information. *See Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC.*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017) (finding claims directed to the functional results of accumulating, converting, and monitoring records manipulate data "but fail[] to do so in a non-abstract way"); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the "claims generally recite . . . extracting data . . . [and] recognizing specific information from the extracted data" and that the "claims are drawn to the basic concept of data recognition").

Here, the collection, analysis, manipulation, and communication of information (data)—in the form of receiving and storing information in memory; analyzing the information (comparing the stored information to criteria); and analyzing/manipulating information to determine closeness, payment, and benefit values based on the closeness—are analogous to the abstract ideas of collecting, analyzing, and manipulating information discussed in *Electric Power Group*, *Two-Way Media*, and *Content Extraction*.

Appellant's claims can also be distinguished from patent-eligible claims such as those in *Enfish* that are directed to "a specific improvement to the way computers operate." *Enfish*, 822 F.3d at 1336. Appellant's claims are directed to the results of data analysis and manipulation (comparing information to determine closeness (by unidentified means) and determine payment and benefit values based on closeness to provide a deferred death benefit) rather than "a particular way of performing" or "inventive technology for performing those functions" or, in other words, "achiev[ing] these results in a non-abstract way." *Two-Way Media*, 874 F.3d at 1337–38 (internal quotations omitted). In summary, "the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools." *Elec. Power Grp.*, 830 F.3d at 1354. Thus, we agree with the Examiner that the claims are directed to the abstract ideas of collecting, analyzing, and manipulating information utilizing a computer.

Alice Step 2 Analysis

Having found Appellant's claims are directed to an abstract idea under *Alice*'s step 1 analysis, we next address whether the claims add significantly more to the alleged abstract idea. As directed by our reviewing court, we search for an "'inventive concept' sufficient to 'transform the nature of the claim into a patent-eligible application.'" *McRO*, 837 F.3d at 1312 (quoting *Alice*, 134 S. Ct. at 2355). The implementation of the abstract idea involved must be "more than performance of 'well-understood, routine, [and] conventional activities previously known to the industry.'" *Content Extraction*, 776 F.3d at 1347–48 (alteration in original) (quoting *Alice*, 134 S. Ct. at 2359). The "inventive concept" "must be significantly more than

the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer." *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016) (citation omitted).

Here, the Examiner determined that Appellant's claims do not add significantly more. *See* Final Act. 2–3; Ans. 4–6. Appellant, on the other hand, contends the Examiner did not provide sufficient evidence or analysis to demonstrate that "the claims do not recite significantly more than an abstract idea." Appeal Br. 5; *see* Appeal Br. 3–5; Reply Br. 3. Appellant also contends the claims "recite *significantly more* than 'providing a deferred death benefit'" (Appeal Br. 6), *inter alia*, because "the claims recite a deferred death benefit that must be purchased in a first period and paid for again in the second period, with amounts of payments as well as the amount of the benefit itself being based on a degree of closeness between the insured's health at the time of purchase and predetermined criteria" (Appeal Br. 7). *See* Appeal Br. 5–9; Reply Br. 2–4.

Appellant fails to persuade us of error in the Examiner's rejection with respect to the second *Alice* step. We agree with the Examiner that Appellant's claim 1 (and the other pending claims) does not evince an "inventive concept" that is significantly more than the abstract idea itself.

With respect to Appellant's prima facie case and evidentiary contentions, the Examiner provides an explanation as to why claim 1 is patent ineligible under the second *Alice* step. *See* Final Act. 2–3; Ans. 4–6. The Examiner also provides supporting evidence. *See* Ans. 5–6 (citing Spec. 13:22–26 (Examiner cites as paragraph 53)). We agree with the Examiner that the collection analyzing, and manipulation of information,

utilizing undisclosed means (algorithms, processes, and/or devices) utilizing a generic computer system and processor (*see* discussion *supra*; Spec. 3:28–31("a computer or other processing device, embodies one or more programs of instructions executable by the computer to perform method steps for providing deferred life insurance that becomes effective later in life"), 13:22–26) does not amount to significantly more than the abstract idea.

Here, Appellant simply reiterates the limitations of claim 1 and concludes that the limitations "amount[] to significantly more than simply providing a deferred death benefit." Appeal Br. 8; *see* Appeal Br. 6–9; Reply Br. 3. Appellant does not explain how the limitations (individually and in combination) are not routine or are unconventional. As we explain *supra*, we agree with the Examiner that Appellant's claim limitations do not amount to significantly more than the abstract idea of providing a deferred death benefit, in that the limitations implement (facilitate) providing a deferred death benefit (determining payment and benefits amounts, and determining whether to provide the benefits) by performance of well-understood, routine, and conventional activities.

We agree with the Examiner that the additional limitations, separately, or as an ordered combination, do not provide meaningful limitations (i.e., do not add significantly more) to transform the abstract idea into a patent eligible application. *See* Final Act. 2–3; Ans. 4–6. The claim merely recites functions (processes) for collecting, analyzing, and manipulating data using known conventional computers and/or equipment to effect conventional insurance-related transactions—determine payments and benefits to provide a deferred death benefit. Such conventional computer processes "do not alone transform an otherwise abstract idea into patent-eligible subject

matter." *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings*, 773 F.3d at 1256).

Appellant also contends that the claims do not preempt the Examiner's asserted abstract idea—"the appealed claims do not tie up or preempt others from 'providing a first deferred death benefit'" (Appeal Br. 8). *See* Appeal Br. 8–9; Reply Br. 4 (citing *Alice*, 134 S. Ct. at 2355–56). As pointed out by the Examiner, "preemption is not a stand-alone test for eligibility." Ans. 6; *see* Ans. 6–7. Although preemption is the concern that drives the exclusionary principle of judicial exceptions to patent-eligible subject matter (*see Alice*, 134 S. Ct. at 2354), preemption is not a separate test of patent-eligibility, but is inherently addressed within the *Alice* framework. *See Ariosa Diagnostics, Inc., v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) ("While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.").

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner's rejection under § 101 of independent claim 1 and dependent claims 2–15, which were not argued separately.

CONCLUSION

Appellant has not shown that the Examiner erred in rejecting claims 1–15 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's rejection of claims 1–15.

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).

<u>AFFIRMED</u>