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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JANG KIM, JONATHAN MICHAEL KINGSTON, and MICHAEL WILLIAMS[1]

Appeal 2017-007056
Application 13/462,748
Technology Center 3600

Before BIBHU R. MOHANTY, BRADLEY B. BAYAT, and AMEE A. SHAH, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134(a) of the final rejection of claims 1 and 5–16 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

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[1] The real party in interest is Boku, Inc.

THE INVENTION

The Appellants' claimed invention is directed to a method to suggest prices for payments to be processed via mobile communications (Spec., para. 11). Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A computer-implemented method, comprising:
>
> receiving, in an interchange computing device, a price point query from a merchant device over a data communications network, the price point query identifying at least one attribute of at least one customer at a user terminal;
>
> determining, by the interchange computing device, a set of discrete price points, based on the at least one attribute of the customer;
>
> communicating, by the interchange computing device, a price point suggestion that includes the set of discrete price points to the merchant device in replying to the price point query, wherein the set of discrete price points that the interchange computing system communicates to the merchant device includes a plurality of discrete price points, wherein the merchant device is to select a selected price point from the plurality of discrete price points of the set of discrete price points and provide an offer at the selected price point from a merchant to the customer at the user terminal, receive a purchase request from the customer, and in response to receiving the purchase request transmit a request to make a payment at the selected price point to the interchange computing device;
>
> receiving, in the interchange computing device, the request to make the payment at the selected price point from the merchant device on behalf of the customer; and
>
> processing, by the interchange computing device, the payment using funds of the customer by transmitting, by the computing device, at least one message to a telecommunication carrier, wherein the at least one message has a predetermined price, according to which the telecommunication carrier is to

bill the customer and provide funds to an operator of the interchange computing device.

THE REJECTION

The following rejection is before us for review:

Claims 1 and 5–16 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence[2].

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellants argue that the rejection of claim 1 is improper because the claims are not directed to an abstract idea and instead are directed to "an improvement in computer functionality" (App. Br. 12).

In contrast, the Examiner has determined that the rejection of record is proper (Final Act. 3, 4, Ans. 2–8).

We agree with the Examiner. Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: "[l]aws of

[2] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

nature, natural phenomena, and abstract ideas" are not patentable. *See, e.g.*, *Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–78 (2012)). In accordance with that framework, we first determine whether the claim is "directed to" a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* This is a search for an "inventive concept" an element or combination of elements sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.* The Court also stated that "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention". *Id at* 2358.

Here, we determine that the claim is directed to the concept of suggesting a price point based on an attribute of the customer and receiving payment for that price. This is a fundamental economic practice long prevalent in our system of commerce or an idea in itself, and is an abstract idea beyond the scope of § 101. In *Versata Development Group, Inc. v. SAP America, Inc.*, (CAFC), 793 F. 3d 1306, 1333 it was held that determining a price, using organizational and product group hierarchies was an abstract idea. *See also Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) where collecting information, analyzing it, and displaying

results from certain results of the collection and analysis was held to be an abstract idea.

The Appellants in the Appeal Brief at page 12 have argued that the claims are directed to an "improvement in computer functionality" and not on economic or other tasks or an abstract idea, but we disagree and determine the claim to be directed to the abstract concept identified above.

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. The Specification at paragraphs 61–66 describes using conventional computer components in a manner for their known functions. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

The Appellants have also cited to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) to show that the claim is not abstract but the claims in that case were not similar in scope to those here and in contrast were directed to a self-referential data table. For these above reasons the rejection of claim 1 is sustained.

The Appellants have provided the same arguments for the remaining claims which are drawn to similar subject matter and the rejection of these claims is sustained as well.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1 and 5–16 under 35 U.S.C. § 101.

DECISION

The Examiner's rejection of claims 1 and 5–16 is sustained.

AFFIRMED