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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT THATCHER

Appeal 2017-007849[1]
Application 13/719,086
Technology Center 3600

Before BRADLEY W. BAUMEISTER, ADAM J. PYONIN, and PHILLIP A. BENNETT, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject all pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Appellant does not identify a real party in interest. Thus, we assume the named inventor is the real party in interest. *See* 37 C.F.R. 41.37(c)(1)(i).

STATEMENT OF THE CASE

Introduction

The Application relates to "power programs that adjust the value proposition afforded to consumers by providing tangible benefits to the consumers' communities." Spec. ¶ 5. Claims 1, 2, 4–15, 18–21, 23, and 31–34 are pending; of these, claims 1 and 31 are independent. Br. 7.[2] Claim 1[3] is reproduced below for reference:

> 1. A method of allocating benefits received in response to generating energy within a community to a community interest, the method being carried out by a computer system having at least a processor and a computer system memory medium, the computer system memory medium having computer-readable instructions for carrying out the method in an energy generating system of the community, the method comprising:
>
> communicating with energy generating equipment deployed on property of a host community member;
>
> delivering at least a portion of the energy generated by the energy generating equipment to one or more of the host community member, a receiving community member, and a power grid, the portion of the energy being a delivered portion of the energy;
>
> measuring the delivered portion of the energy to produce a measurement;
>
> calculating a host benefit associated with one or more of purchasing the energy generating equipment and generating energy with the energy generating equipment, the host benefit defining an amount calculated based on the measurement;
>
> assigning the host benefit to the host community member;
>
> transferring at least a portion of the host benefit to the community interest to define a community interest benefit;

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[2] We refer to the Appeal Brief filed April 11, 2016 (herein, "Br.").

[3] *See* Response to Notice of Non-Compliant Appeal Brief, filed September 2, 2016.

assigning the community interest benefit to the community interest; and

communicating one or more of the community interest benefit and statistics on energy usage to a community accessible network location.

The Examiner's Rejections

Claims 2, 4–15, 18–21, 23, and 31 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Final Act. 2.

Claims 1, 2, 4–15, 18–21, and 31–34 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3–6.

Claims 1, 2, 4–15, 18–21, 23, and 31–34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of prior art references. Final Act. 6–28.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. Appellant does not separately argue the claims. *See* Br. 7, 11. We select claim 1 as representative. *See* 37 C.F.R. 41.37(c)(1)(iv).

A. 35 U.S.C. §§ 112 and 103

Appellant does not challenge the indefiniteness and obviousness rejections. Br. 11. We summarily sustain the rejections of the claims under 35 U.S.C. §§ 112, second paragraph, and 103(a). *See* 37 C.F.R. 41.31(c) ("An appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed by the applicant and entered by the Office.").

B. 35 U.S.C. § 101

Appellant argues "the pending claims are directed to statutory subject matter and are currently in condition for allowance, and requests the Board reverse the Examiner's rejection under § 101." Br. 7 (citing the two-step patent-eligibility framework provided in *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014)). Particularly, "Appellant respectfully submits the computer recited in claim 1 is not a 'generic computer,'" as "the computer is configured to carry out a method that provides communication between at least a host community member (152), a solar service provider (154), a separate receiver entity (156), and a utility (162)." Br. 9–10. Appellant further contends the claims surmount the threshold of patentability because the claimed "computer system and generation technology is used to convert generated energy, which is measurable and economically quantifiable, into quantified benefits that can be and are disseminated." Br. 10 (citing *Diamond v. Diehr*, 450 US 175 (1981)).

We are not persuaded the Examiner errs in determining the claims are patent ineligible. We adopt the Examiner's reasoning therein, and add the following analysis for emphasis.

Claim 1 recites a "method of allocating benefits received in response to generating energy," by taking steps such as sharing ("communicating," "delivering," "transferring"), determining ("measuring," "calculating"), and assigning information and energy. The Specification explains that these benefits can be "subsidies and economic benefits" (Spec. ¶ 65) such as "energy credits, beneficial tax treatment, or rebates" (Spec. ¶ 27). *See* Spec. ¶¶ 76–78 (providing various examples of benefits). That is, the benefits allocated by the claim are financial in nature. We agree with the

Examiner that the claims are "directed to the abstract idea of allocating benefits (such as energy credits) received in response to generating energy," which "is a fundamental economic practice and a method of organizing human activities for the purpose of managing transactions between entities." Final Act. 3.

The claims are abstract pursuant to step one of the *Alice* framework, because the claims are directed to a concept (i.e., allocating financial benefits) that is similar to practices the courts have found to be abstract. *See, e.g.*, *Bilski v. Kappos*, 561 U.S. 593, 595 (2010) ("how hedging can be used in commodities and energy markets, [is an] attempt to patent the use of the abstract hedging idea"); *Alice*, 134 S. Ct. at 2355 ("the abstract idea of intermediated settlement"); *Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that "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"); *Buysafe, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (claims that "are squarely about creating a contractual relationship—a 'transaction performance guaranty'" held as "directed to an abstract idea"); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed. Cir. 2009) (structuring a sales force or marketing company is abstract); *In re Eberra*, 730 F. App'x 916, 918 (Fed. Cir. 2018) ("Like the concept of risk hedging, which the Supreme Court found to be an abstract idea in *Bilski v. Kappos*, the concept of product promotion is a fundamental economic practice long prevalent in our system of commerce." (internal quotations omitted)); *see also* Ans. 4–5.

We also agree with the Examiner that, under step two of the *Alice* framework, "[t]he claims do not include additional elements that are

sufficient to amount to significantly more than the judicial exception." The claims limitations are "mere instruction[s] to apply the abstract idea and require no more than a generic computer and generic energy generation equipment to perform generic functions that are well-understood, routine and conventional activities." Final Act. 3. There is no indication on the record before us that any specialized computer or networking hardware is required. To the contrary, the Specification explains that the computer and networking technology used is well known in the art. *See* Spec. ¶¶ 17–26; Ans. 4–5; *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) ("after Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible").

Appellant argues the claimed computer is not generic due to the specific programming (Br. 10); however, specificity alone is insufficient to transform a claim into significantly more than an underlying patent-ineligible concept. *See Alice*, 134 S. Ct. 2357 ("The introduction of a computer into the claims does not alter the analysis."); *cf. Gottschalk v. Benson*, 409 U.S. 63, 73–74 (1972) (providing an example of a narrowly-tailored, patent-ineligible method of converting signals from binary coded decimal form into binary).

Appellant has not shown the Examiner errs in determining "Appellant has not invented a new way of generating, transmitting, or measuring energy" and the claims "do not transform converted energy into a different state o[r] thing[,] but rather quantify the amount of energy generated in terms of a benefit (such as energy credits)[,] which simply describes the abstract idea of allocating benefits (such as energy credits) received in

response to generating energy." Ans. 5–6. The claims are applying specialized financial techniques to known methods of power generation and distribution, in order to "change the value proposition afforded by renewable energy programs." Spec. ¶ 36; *see also* Spec. ¶¶ 2–4, 38 (describing "revenue sharing models."). The claimed method steps do not transform the claim into a patent-eligible invention. *See Bilski*, 561 U.S. at 643 ("[N]either the Patent Clause, nor early patent law, nor the current § 101 contemplated or was publicly understood to mean that [better ways to conduct business] are patentable.").

Accordingly, we are not persuaded the Examiner errs in finding the claims to be patent ineligible. *See* Ans. 4–6.

DECISION

The Examiner's decision rejecting claims 1, 2, 4–15, 18–21, 23, and 31–34 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)(1)(iv).

AFFIRMED