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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CATALIN POPESCU

Appeal 2017-009016
Application 14/097,468
Technology Center 3600

Before MAHSHID D. SAADAT, BETH Z. SHAW, and
JOHN D. HAMANN, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner’s final rejection of claims 1, 3–8, 10–15, and 17–23, which represent all the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellant’s invention is directed to a computer system that modifies retail sales planning curves. Spec. ¶ 1.

¹ Throughout this Decision we have considered the Appeal Brief filed December 12, 2016 (“App. Br.”), the Reply Brief filed June 6, 2017 (“Reply Br.”), the Examiner’s Answer mailed April 6, 2017 (“Ans.”), and the Final Rejection mailed July 20, 2016 (“Final Act.”).

Claim 1 is illustrative of the claims at issue and is reproduced below:

1. A non-transitory computer-readable medium having instructions stored thereon that, when executed by a processor, cause the processor to modify an input sales planning curve comprised of a time series, the modifying comprising:

expanding the time series from an initial length time series to an expanded length time series, the expanded length time series comprising one or more missing values, wherein the time series comprises a plurality of time periods and a value corresponding to each of the time periods;

filling in the missing values using linear interpolation;

sampling the expanded time series by selecting a subset of the expanded length time series values; and

dropping the values not selected during the sampling to generate an output sales planning curve;

wherein the input sales planning curve comprises M periods, and the output sales planning curve comprises N periods, the expanded length time series comprising a length of $(M - 1) \times (N - 1) + 1$.

REJECTION

The Examiner rejected claims 1–20 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–8. After the Final Rejection, Appellant canceled claims 2, 9, and 16, amended the claims, and added new claims 21–23. Claims 1, 3–8, 10–15, and 17–23 are currently pending. *See* Advisory Action dated October 12, 2016.

In the Advisory Action, the Examiner withdrew a rejection under 35 U.S.C. § 103, maintaining the § 101 rejection as the only pending rejection of all the pending claims (i.e., claims 1, 3–8, 10–15, and 17–23). *See* Ans. 3.

CONTENTIONS AND ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced. For at least the reasons discussed below, we agree with and adopt the Examiner's findings and conclusions in the Final Action and Answer.

The Examiner determines the pending claims are directed to an abstract idea of a managing a sales curve (i.e., to be used in planning or forecasting). Final Act. 3, 7; Ans. 7. The Examiner also determines additional elements recited in these claims do not amount to significantly more than the abstract idea itself. Final Act. 7, 8; Ans. 8–12. According to the Examiner, the claims require no more than implementing the abstract idea on a computer. Final Act. 7, 8.

Appellant presents several arguments against the 35 U.S.C. § 101 rejection. App. Br. 2–9; Reply Br. 2–5. Appellant contends the claims are not directed to an abstract idea and that the claims amount to significantly more than an abstract idea. *Id.*

Appellant's arguments are unpersuasive. Instead, we find the Examiner has provided a comprehensive response to Appellant's arguments supported by a preponderance of evidence. Ans. 3–12; *see also* Final Act. 2–13. As such, we agree with and adopt the Examiner's findings and explanations provided therein. *Id.*

The Supreme Court has long held that “[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 *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 598–99 (2013)). The “‘abstract ideas’ category embodies ‘the longstanding rule that ‘[a]n idea of

itself, is not patentable.” *Alice*, 134 S. Ct. at 2354–2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–78 (2012)). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.*

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 77–80). In other words, the second step is to “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.’” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

After undertaking the first step of the *Alice* inquiry, we agree with the Examiner that Appellant’s claims are directed to an abstract idea, as explained by the Examiner. Final Act. 3–7. All the steps recited in Appellant’s claims are abstract processes of modifying data. *Cf. Elec.*

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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” is abstract); *In re Salwan*, 681 Fed.Appx. 938, 941 (Fed. Cir. Mar. 13, 2017) (affirming the rejection under § 101 of claims directed to “storing, communicating, transferring, and reporting patient health information,” noting that “while these concepts may be directed to practical concepts, they are fundamental economic and conventional business practices”); *Cyberfone Systems, LLC v. CNN Interactive Grp, Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (nonprecedential) (“using categories to organize, store, and transmit information is well-established”).

Appellant argues the claims as a group. *See* App. Br. 3–15.

Appellant contends that the Examiner erred in rejecting the claims under 35 U.S.C. § 101 because:

In comparing the alleged abstract idea of the pending claims to a generic category of “mathematical relationships/formulas”, the Examiner is essentially performing an abstraction of the alleged abstract idea, and generalizing the alleged abstract idea at such a high level (i.e., mathematical relationships/formulas) that it no longer has **ANY** relationship to the recited limitations. Under this type of impermissible analysis, **ALL** abstract ideas will have been considered to be identified by a court, and the required analysis from the PTO guidance would be rendered meaningless. Further, the extent of the Examiner’s analysis appears to be that because the claims recite algorithms or mathematics performed by a computer, the claims are abstract, and there is no inventive concept to make the abstract idea patent eligible.

App. Br. 5.

We disagree. Instead, we agree with the Examiner’s determination that “modify[ing] an input sales planning curve,” is a mathematical

relationship. Contrary to Appellant’s position, we conclude that the claim solves a mathematical problem.

The second step of the *Alice* inquiry indicates that the limitations in Appellant’s claims do not add anything “significantly more” to transform into a patent-eligible application the abstract concept of managing a sales curve. Final Act. 7, 8; Ans. 11; *see also Alice*, 134 S. Ct. at 2357. We agree with the Examiner that the computer limitations of claim 1 are not “significantly more” than the abstract idea. Ans. 7. As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358; *see id.* at 2359 (concluding claims “simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer” are not patent eligible); *see also Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer” are not patent eligible); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (“[s]imply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible” (internal citation omitted)).

Appellant cites *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (2016) (App. Br. 7), but does not persuasively explain why that case is similar to the present case. In *Bascom*, the court determined that at the pleading stage and construed in favor of the nonmovant:

The inventive concept described and claimed . . . is the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. BASCOM explains that the inventive concept rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.

Id. at 1350 (emphasis added).

The rejected claims are unlike the claims of *Bascom* because they are not directed to an “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *Id.* at 1350. Nor do they “give[] the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.” *Id.* In fact, the pending claims do not even recite any “ISP server.”

With regard to Appellant’s argument that the pending claims are patent eligible because there are no pending obviousness or novelty rejections of the claims, (*see* App. Br. 6; Reply Br. 4), Appellant improperly conflates the requirements for eligible subject matter (§ 101) with the independent requirements of novelty (§ 102) and non-obviousness (§ 103). “The ‘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); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (stating that, “under the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the

novelty of that discovery for the inventive concept necessary for patent eligibility”).

We have also carefully considered the Appellant’s arguments regarding preemption. *See* App. Br. 8. However, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Where claims are deemed to recite only patent ineligible subject matter under the two-step *Alice* analysis, as they are here, “preemption concerns are fully addressed and made moot.” *Id.*

Because Appellant’s claims are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of these claims under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice* and its progeny.

DECISION

The decision of the Examiner to reject claims 1, 3–8, 10–15, and 17–23 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