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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MARK ANGEL, ROB ARSENAULT, MAX COPPERMAN,  
CHARLIE ISAACS, SAMIR MAHENDRA,  
VIKAS NEHRU, and DILPREET SINGH

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Appeal 2017-009646  
Application 12/603,524  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and  
MICHAEL W. KIM, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 from the Examiner's final decision rejecting claims 1–13. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We affirm.

## BACKGROUND

Appellants' invention is directed to business process modeling, and more particularly to workflow composition for business process modeling. A process model is an abstract description of a process such as a business process or any other process related to the lifecycle of a system. Spec. ¶¶ 1, 2.

Claim 1 is illustrative:

1. A user interface workflow composition method comprising:

loading into a composition module executing in memory by a processor of a computer from a data store coupled to the computer, a set of references to both human steps of a workflow, each of the human steps of the workflow referencing a corresponding user interface, and also automated steps of a workflow, each of the human steps and automated steps of the workflow individually comprising contextual data;

visually placing individual graphical elements each representative of a selected one of the human steps and automated steps into a canvas rendered by the composition module;

defining transitions between different ones of the human steps and automated steps represented by corresponding ones of the graphical elements in the canvas by creating visual connections between the different ones of the graphical elements in the canvas, the human steps and automated steps represented by the graphical elements in the canvas, and the transitions defined therebetween setting forth a user interface workflow; and,

generating computer readable instructions for the user interface workflow.

Appellants appeal the following rejection:

Claims 1–13 are rejected under 35 U.S.C. § 101 because the claims fail to satisfy § 101 requirements.

#### PRINCIPLES OF LAW

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 implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim 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*. *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. Ct. 66, 75–78 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (“Analyzing respondents’ claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter.”); *Parker v. Flook*, 437 U.S. 584, 594–95

(1978) (“Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) (“They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.”).

The patent-ineligible end of the spectrum includes fundamental economic practices (*Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker*, 437 U.S. at 594–95); and basic tools of scientific and technological work (*Gottschalk*, 409 U.S. at 69). On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber (*Diamond*, 450 U.S. at 184 n.7), “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,” and a process for manufacturing flour (*Gottschalk*, 409 U.S. at 69).

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. 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. *Alice*, 134 S. Ct. at 2355.

In addition, the Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”).

Claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. 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”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

Claims that recite an improvement to a particular computer technology have been found patent eligible. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (determining claims not abstract because they “focused on a specific asserted improvement in computer animation”).

## ANALYSIS

The Examiner determines that the claims are directed to a series of steps for setting up parameters of a graphical user interface. Specifically, the Examiner determines that the claims are directed to receiving data, and generating the graphical displayed workflow, which is a method of organizing human activities and/or using categories to organize, store and transmit data and/or using a computer to run and display data. Final Act. 2.

The Examiner finds that the claims do not recite additional elements that are sufficient to amount to significantly more than the judicial exception, because the additional elements or combination of elements are recitations of generic computer structure. The Examiner also finds that the

claims do not recite an improvement to another technology or technical field, or improvement to the functioning of the computer itself. Final Act. 3.

We agree with the Examiner's determination that the claims are directed to an abstract idea. The claims are directed to the collection, analysis, and display of data. We also agree with the Examiner's finding that the claims do not include significantly more than the abstract idea.

We are not persuaded of error on the part of the Examiner by Appellants' argument that the claims are directed to improved workflow *design tools*. In particular, Appellants argue that the claims are directed to a method, system and computer program for the visual composition of flow and end user interactions with different steps of a workflow, and are not the mere notation of setting up generic parameters on a computer and, therefore, are not directed to an abstract idea. Br. 7–9.

We agree with the Examiner that the Appellants have not claimed specific elements for actually creating an improved workflow design tool, but rather the claims recite steps for predefining tasks/transition data and manipulating visual data using well-known computer based tools. Ans. 3.

Claim 1, for example, recites loading data from a data store. The data is a set of references to both representative human steps of a workflow and automated steps of the workflow in which each step references a corresponding user interface. The human steps and automated steps comprise data. The data is analyzed by visually placing graphical elements that are representative of a selected one of the human steps and automated steps into the canvas rendered by the composition module. The data is further analyzed by defining transitions between different ones of the human steps and automated steps. Finally, the data is analyzed by generating

computer readable instructions for the user interface workflow. These steps are clearly directed to the abstract idea of collecting, analyzing and displaying data and are well-known computer functions.

Appellants argue that the claimed subject matter is directed to a specific improvement to the way computers operate. Specifically, Appellants argue that the claims' graphical user interface method imparts specific functionality to a system directed to a specific implementation of a solution to a problem in the software arts. Br. 11.

Appellants' argument does not apprise us of error because Appellants appear to conflate the conventionality of the steps being performed by a processor and the conventionality of the computer functions required to implement the steps. In addition, Appellants do not explain what improvements to the operation of the computer are referred to.

We are also not persuaded of error on the part of the Examiner by Appellants' argument that the claims provide a novel and non-obvious method, system and computer program product for user interface workflow composition. Br. 10.

To the extent Appellants maintain that the limitations of claim 1 necessarily amount to "significantly more" than an abstract idea because the claimed apparatus is allegedly patentable over the prior art, Appellants misapprehend the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an "inventive concept," the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for "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*, 134 S. Ct. at 2355. A novel and

nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

We are not persuaded of error on the part of the Examiner by Appellants' argument that substantial evidence does not support a finding that the claims are directed to a series of steps for setting up parameters of a graphical user interface. Br. 10. Appellants argue that the application supports a finding that the claims are not an attempt to patent the concept of setting up parameters on a computer for a GUI.

In making this argument, Appellants rely on an opinion of another panel of the Patent Trial and Appeal Board in another case. However, since this opinion was non-precedential, it is not binding on this panel.

In addition, consideration of evidence in making a determination under the first step of the *Alice* framework has merit. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229 (Fed. Cir. 2016). However, there is no requirement that examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. Evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. It is not necessary in this case because there is no factual dispute that the claims are directed to the collection, analysis and display of data.

We are not persuaded of error on the part of the Examiner by Appellants' argument that the steps recited in the claims are not steps that were being performed in conventional industry practice, and that there is no evidence that the functions of the computer are well-understood and conventional activities known in the employment and social network art. Br. 13. Appellants specifically argue that the steps of loading into a

composition module executing in memory by a processor of a computer from a data store coupled to the computer, a set of references to both representative human steps of a workflow and automated of a workflow, in which each of the human steps of the workflow references a corresponding user interface were not conventional activities known in the employment and social network art. Br. 14.

The difficulty with Appellants' argument is that the features of claim 1 that Appellants maintain are not well-understood, routine, and conventional are part of the abstract idea of collecting, analyzing and displaying data; they are not *additional* elements to be considered when determining whether the additional elements or a combination of elements amounts to significantly more than the judicial exception. *See BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) ("It 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.").

In view of the forgoing, we will sustain the Examiner's rejection of claim 1. We will also sustain the rejection as it is directed to claims 2–6 because the Appellants have not argued the separate eligibility of these claims.

In regard to claims 7–13, Appellants argue that these claims recite a non-conventional and non-generic arrangement of known conventional pieces similar to the claims in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016). Br. 14. This argument is not persuasive because the Appellants do not explain what non-

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generic arrangement of conventional pieces are recited in claims 7–13.  
Therefore, we sustain the Examiner’s rejection of these claims as well.

#### DECISION

We affirm the Examiner’s 35 U.S.C. § 101 rejection.

#### TIME PERIOD

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) (2009).

AFFIRMED