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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HOUSSAM SALLOUM[1]

Appeal 2017-010128
Application 10/032,213
Technology Center 3600

Before CAROLYN D. THOMAS, J. JOHN LEE, and
ADAM J. PYONIN, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's Non-Final Rejection of claims 1–5, all the pending claims in the present application. Claims 6–20 are canceled. *See* Claims Appendix. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

The present invention relates generally to selecting a cargo carrier. *See* Abstract.

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[1]Appellant names the sole inventor, Houssam Salloum, as the real party in interest (App. Br. 3).

Claim 1 is illustrative:

1. A method for selecting a cargo carrier and arranging transportation for cargo, the method comprising:

storing electronically on a plurality of individual computer systems cargo transportation data relating to a plurality of cargo transportation options available from a plurality of cargo carriers;

electrically connecting a host computer system with the plurality of individual computer systems to provide the host computer system with access to the cargo transportation data of the cargo carriers;

connecting the host computer to a user display via the internet;

providing the user display with a port of loading graphical user interface which includes a manually rotatable global illustration and a port of loading selectable list that is displayed as a function of manual rotation of the global illustration by the user;

receiving at the host computer system a user selection from the port of loading locations displayed on the port of loading graphical user interface;

providing the user display with a port of discharge graphical user interface which includes a manually rotatable global illustration and a port of discharge selectable list that is displayed as a function of manual rotation of the global illustration by the user;

receiving at the host computer system a user selection from the port of discharge locations displayed on the port of discharge graphical user interface;

providing the user display with a cargo transportation graphical user interface including a cargo type selectable list comprising at least two of dimensional cargo, vehicles cargo, break bulk cargo, and containers cargo;

receiving at the host computer system a user selection from the cargo type selectable list;

automatically comparing by the host computer system the user selections received from the port of loading selectable list, the port of discharge selectable list, and the cargo

type selectable list to the cargo transportation data for determining a plurality of matching transportation options;

providing the user display with a selectable list of the plurality of matching transportation options along with their respective price quotes;

receiving at the host computer system a user selection of a preferred cargo transportation option from the plurality of matching transportation options.

Appellant appeals the following rejections:

R1. Claim 1[2] is rejected on the ground of nonstatutory double patenting as being unpatentable over claims 21, 23, and 25 of copending Application No. 11/666,936 matter (Non-Final Act. 3–4).

R2. Claims 1–5 are rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter (Non-Final Act. 5–8).

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Provisional Double Patenting Rejection

The Examiner rejects claim 1 on the ground of nonstatutory double patenting as being unpatentable over claims 21, 23, and 25 of copending Application No. 11/666,936 (Non-Final Act. 4).

Appellant contends that if "the double patenting rejection will be the only remaining issue[, it] . . . should be withdrawn so that the present application can issue as a patent without a terminal disclaimer" (App. Br.

[2] Claims 6 and 13 are canceled.

7–8), i.e., because a terminal disclaimer was filed in the co-pending Application No. 11/666,936.

In response, the Examiner concludes that "a terminal disclaimer still needs to be filed to overcome the double patenting rejection" (Ans. 3).

In the Reply Brief, Appellant points out that Application No. 11/66,936 "was expressly abandoned on July 21, 2017" (Reply Br. 2). Given the abandonment of Application No. 11/66,936, we agree with Appellant that the double patenting rejection is now moot.

Accordingly, we reverse the double patenting rejection.

Rejection under § 101

Issue: Did the Examiner err in finding that the claims are directed to patent-ineligible subject matter?

Alice Corp. Pty. v. CLS Bank Int'l, 134 S. Ct. 2347 (2014), identifies a two-step framework for determining whether claimed subject matter is judicially excepted from patent eligibility under § 101. According to *Alice* step one, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 134 S. Ct. at 2355. "If the claims are not directed to an abstract idea [or other patent-ineligible concept], the inquiry ends. If the claims are 'directed to' an abstract idea, then the inquiry proceeds to the second step of the *Alice* framework." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016). In analyzing whether a claim is directed to an abstract idea, we look to other decisions where courts have considered

whether similar concepts are abstract. *See Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016).

In this regard, with respect to independent method claim 1, the Examiner determines that the claims are directed to "actions [for] . . . arranging transportation for cargo . . . [such as,] collecting and comparing known information, comparing data to determine a risk level, comparing new and stored information and using rules to identify options, using categories to organize, store, and transmit information, data recognition and storage" (Non-Final Act. 7). This is an adequate basis for determining that the claims are directed to an abstract idea.

Here, Appellant does not challenge the Examiner's "abstract idea" determination, but rather directs all arguments toward "the claims [having] . . . additional limitations that amount to significantly more" pursuant to *Alice* step two (*see* App. Br. 8–13). If an Appellant fails to present arguments on a particular issue—or, more broadly, on a particular rejection—the Board will not, as a general matter, review *sua sponte* those uncontested aspects of the rejection. (*See, e.g., Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments Appellant failed to make for a given ground of rejection as waived)).

As such, we shall treat Appellant's arguments (or lack thereof) as conceding that the claims are directed to the Examiner's proffered abstract idea. Thus, we agree with the Examiner that the claims are directed to an abstract idea.

We now turn to the second step of the *Alice* framework: "a 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.'" *Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

Appellant contends that "there are additional limitations that amount to significantly more that this abstract idea" (App. Br. 8). Specifically, Appellant highlights that the Examiner has "mistakenly overlook[ed] the more specific technological and structural recitations in the claims of at least a 'manually rotatable global illustration' as well as a 'cargo transportation graphical interface' which are presented on the graphical user interface to facilitate the selecting and arranging of cargo transportation" (*id.* at 9), which Appellant contends is not merely routine and conventional (*id.* at 10).

The Examiner determines that "the claims amount to nothing more than requiring a generic computer to perform generic computer functions that are well-understood, routine and conventional activities" (Non-Final Act. 5). The Examiner further concludes that "[t]he problem being solved is old and well known in the pre-computer world" (Ans. 3), and "the technical functions recited are generic in nature and applied to a generic computer environment [that] . . . do not improve another technology or technical field" (*id.* at 4). The Examiner also distinguishes Appellant's claims from *DDR Holdings*[3] by noting that the present claims are "the application of non-computer commerce to computer environments for the purpose of convenience[,] . . . a problem [that] is purely commercial in nature" (*id.* at 5).

Although we understand the claimed invention may use "generic computer, network, and Internet components, none of which is inventive by

[3] *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

itself," the "inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces." *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016).

With that in mind, we find that, even if we agree with the Examiner that generic components are being utilized, the Examiner has not addressed Appellant's specific arguments *supra* pertaining to whether the claimed "manually rotatable global illustration" and/or "a cargo transportation graphical interface" used in combination with the generic components embody non-conventional and non-generic arrangements of known conventional pieces, i.e., necessarily requiring the GUI to operate in an unconventional manner.

For example, Appellant directs our attention to the Specification (*see* App. Br. 11), which describes the aforementioned additional limitations, e.g., "a graphic illustration may include a map . . . with various click-on portions so that a user can point-and-click" (4:22–24) and "[t]he user 40 can be assisted by a global illustration 82. The global illustration 82 can be rotated by clicking on arrows 83 or 84 to show a desired part of the world" (5:22–23). In other words, Appellant's GUI display page is assisted by additional tools, e.g., a manual global illustration tool.

The Examiner has not set forth with sufficient specificity or provided any finding that the specifically claimed manner of selecting a cargo carrier using the manually rotatable global illustration is well-understood, routine, or conventional. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) ("Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination."); *cf.*

Trading Techs. Int'l, Inc. v. CQG, INC., 675 F. App'x 1001, 1004 (Fed. Cir. 2017) ("[T]he specific structure and concordant functionality of the graphical user interface are removed from abstract ideas, as compared to conventional computer implementations of known procedures. Thus the . . . criteria of Alice Step 2 were [] met.").

Thus, we are constrained by the record, under *Alice* step two, to determine that the Examiner has not properly considered the elements of the claims, both individually and "as an ordered combination," by making a factual determination to determine whether the additional elements identified by Appellant transform the Examiner's asserted abstract idea into a patent-eligible application.

For the above reasons, the Examiner's rejection of claims 1–5 under 35 U.S.C. § 101 is reversed.

DECISION

We reverse the Examiner's § 101 rejection and double patenting rejection.

REVERSED