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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AHMAD NASER ABDELRAHMAN,
PAUL HUGH WILKIE BISHOP,
GLENN DEXTER SWANSON, DEEPANKAR DEY,
TODD SPRAGGINS, and BEN ENG

Appeal 2017-010375
Application 13/936,584
Technology Center 3600

Before ST. JOHN COURTENAY III, CATHERINE SHIANG, and
JOYCE CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Oracle International Corporation. App. Br. 3.

INVENTION

Appellants' invention relates to a service design and order fulfillment system. Title. Claim 1 is illustrative and reads as follows:

1. A non-transitory computer-readable medium having instructions stored thereon that, when executed by a processor, cause the processor to optimize a fulfillment solution and fulfill an order using the fulfillment solution, the optimizing and fulfilling comprising:

receiving an input;

defining a technical catalog that comprises one or more items comprising metadata associated with a fulfillment solution;

selecting a process logic at runtime from a set of selectable process logic;

generating a transformation sequence using the selected process logic;

dynamically generating a runtime process flow comprising a customized output from the input based on the transformation sequence and the metadata,

wherein the transformation sequence is customized based on the metadata, and wherein the runtime process further comprises defining a fulfillment solution blueprint that comprises a plurality of order layers that define a plurality of layers of the fulfillment solution, a plurality of provider functions comprising a plurality of components of the fulfillment solution, and a plurality of interface contracts defining a plurality of interactions between a plurality of provider functions;

designing the fulfillment solution to use at least one item of the one or more items of the technical catalog;

designing the fulfillment solution based on the fulfillment solution blueprint; and

generating the fulfillment solution based on the fulfillment solution blueprint using the at least one item of the one or more items of the technical catalog.

App. Br. 28–29 (Claims App.).

REJECTIONS

Claims 1–20 stand provisionally rejected on the ground of nonstatutory double patenting as unpatentable over claims 1–20 of copending US Application No. 13/936,588 in view of claims 1–20 of copending US Application No. 13/936,567. Final Act. 11–12.

Claims 1–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception to patentability, without significantly more. Final Act. 12.

Claims 1–5, 7, 9–13, 15–18, and 20 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over the combination of Maes (US 2009/0193433 A1; published July 30, 2009) and Christfort et al. (US 2002/0129016 A1; published Sept. 12, 2002) (“Christfort”). Final Act. 13–22.

Claims 6, 14, and 19 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over the combination of Maes, Christfort, and Goldberg (US 2005/0289013 A1; published Dec. 29, 2005). Final Act. 23–25.

Claim 8 stands rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over the combination of Maes, Christfort, and Rijhsinghani et al. (US 2011/0112885 A1; published May 12, 2011) (“Rijhsinghani”). Final Act. 26–27.

ANALYSIS

Rejection of Claims 1–20 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. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“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.”); *see also 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.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding . . . rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 193 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India

rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (internal citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform

that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (“2019 Guidance”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (MPEP) § 2106.05(a)–(c), (e)–(h)) (9th Ed., Rev. 08.2017, Jan. 2018)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See 2019 Guidance.

Here, Appellants contend the Examiner erred because the claims do not recite the abstract idea of “designing a fulfillment solution and fulfilling an order using the fulfillment solution,” and “the claimed embodiments improve the functioning of a computer.” App. Br. 14–15.

Step 2A, Prong One — Recited Judicial Exception

Step 2A of the 2019 Guidance is a two-prong inquiry. In Prong One, we evaluate whether the claim *recites* a judicial exception. For abstract ideas, in Prong One we determine whether the claim recites mathematical concepts, certain methods of organizing human activity, or mental processes.

Applying the 2019 Guidance, we conclude independent claim 1 recites a fundamental economic practice of order fulfillment, which is a certain method of organizing human activity. We note the preamble of claim 1 is expressly directed to “optimiz[ing] a fulfillment solution and fulfill[ing] an order using the fulfillment solution,” which we conclude is directed to a certain method of organizing human behavior, i.e., a fundamental economic practice.

Claim 1 recites various limitations consistent with this characterization, including:

- defining a technical catalog that comprises one or more items comprising metadata associated with a fulfillment solution;

- selecting a process logic at runtime from a set of selectable process logic;

- generating a transformation sequence using the selected process logic;

- dynamically generating a runtime process flow comprising a customized output from the input based on the transformation sequence and the metadata,

- wherein the transformation sequence is customized based on the metadata, and wherein the runtime process further comprises defining a fulfillment solution blueprint that comprises a plurality of order layers that define a plurality of layers of the fulfillment solution, a plurality of provider functions comprising a plurality of components of the

fulfillment solution, and a plurality of interface contracts defining a plurality of interactions between a plurality of provider functions;

designing the fulfillment solution to use at least one item of the one or more items of the technical catalog;

designing the fulfillment solution based on the fulfillment solution blueprint; and

generating the fulfillment solution based on the fulfillment solution blueprint using the at least one item of the one or more items of the technical catalog.

Independent claim 11 similarly recites “designing a fulfillment solution and fulfilling an order using the fulfillment solution,” and independent claim 16 recites “design[ing a] fulfillment solution,” with similar limitations.

Because we conclude the independent claims recite an abstract idea, we proceed to Prong Two to determine whether the claims are “directed to” the judicial exception.

Step 2A, Prong Two — Practical Application

If a claim recites a judicial exception, in Prong Two we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application. If the recited judicial exception is integrated into a practical application, the claim is not directed to the judicial exception.

Here, although claim 1 includes additional elements, such as “[a] non-transitory computer-readable medium having instructions stored

thereon,” “a processor,” and “receiving an input,” these are insufficient to constitute integration into a practical application because these elements are recited at a high level of generality and the claim simply applies the judicial exception using computer components. In particular, the additional elements do not constitute a particular machine, but instead use a generically-recited computer (i.e., generic computer components) to perform the abstract idea. See 2019 Guidance, 84 Fed. Reg. 50 at III A(2); MPEP § 2106.05(b); *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261 U.S. 45, 64–65 (1923); MPEP § 2106.05(f); *Alice*, 573 U.S. at 222–26; *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017).

We note the introduction of a “processor” into the claims to implement an abstract idea is not a patentable application of the abstract idea. *Alice*, 573 U.S. at 222. The computer implementation here is purely conventional and performs basic functions. See *id.* at 225–26. Appellants do not adequately show how the claimed steps are performed technically such that they cannot be done manually or that they are not routine and conventional functions of a generic computer. See, e.g., Spec.

¶¶ 66. As our reviewing court has observed, “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (citing *Alice*, 573 U.S. at 223–24).

We disagree with Appellants that *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) controls here. See App. Br. 14–16. Appellants argue that “the claimed embodiments improve the functioning of a computer” by using metadata and a transformation sequence to modify and

customize an output solution, which results in avoiding the need to “add entirely new solution stacks to address new domains.” App. Br. 15 (citing Spec. ¶ 4).

The *Enfish* court concluded a self-referential logical table was a specific type of data structure designed to improve the way a computer stores and retrieves data in memory. *Id.* at 1339. Here, Appellants have not shown persuasively that any features of the claimed invention improve the way the recited generic computer components store and retrieve data in a manner analogous to that found by the court in *Enfish*. Moreover, Appellants’ claims 1–20 are silent regarding any mention of a database, much less a self-referential database table similar to the specific type of logical table arrangement the *Enfish* court found was designed to improve the way a computer stores and retrieves data in memory. *See Enfish*, 822 F.3d at 1336.

Therefore, we are not persuaded that Appellants’ claimed invention improves the functionality or efficiency of the recited generic computer components, or otherwise changes the way the computer components function, at least in the sense contemplated by the Federal Circuit in *Enfish*.

We also do not find persuasive Appellants’ attempt to analogize the claims to the subject claims considered by the court in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). App. Br. 16. We note the subject claim considered by the *McRO* court concerned a method for automatically animating lip synchronization and facial expressions. *McRO*, 837 F.3d at 1303. The *McRO* court concluded the subject claims did not recite an abstract idea because the computer animation improved the prior art through the use of rules, rather than artists, to set

morph weights and transitions between phonemes. *Id.* at 1308. Thus, the claimed invention in *McRO* allowed for computer performance of animation steps that previously had to be performed by human animators. *Id.* at 1309. The subject claims in *McRO* used “limited rules in a process specifically designed to achieve an improved technological result” over “existing, manual 3-D animation techniques.” *Id.* at 1316.

Here, Appellants’ claimed invention does not apply positively recited rules, *per se*. The invention under appeal merely adapts to a technological setting (e.g., comprising generic processors) the broad concept of designing a fulfillment solution and fulfilling an order using the fulfillment solution. *See* independent claim 1, and independent claims 11 and 16, which recite similar language of commensurate scope.

Thus, Appellants’ claims merely implement generic computer components to perform the recited functions. We emphasize that *McRO* guides that “[t]he abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” 837 F.3d at 1312 (*quoting O’Reilly v. Morse*, 56 U.S. 62, 113 (1853)).

Appellants’ analogy to *BASCOM Global Internet Services v. AT&T Mobility, LLC*, 827 F.3d 1341 (Fed. Cir. 2016), is similarly unavailing. *See* App. Br. 18. In support, Appellants urge that “the claims are allowable over the prior art, meaning all of the pending claims now recite an inventive concept per Step 2B, as discussed in *Bascom*.” *Id.* at 19.

However, the Supreme Court guides: “[t]he ‘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.” *Diehr*, 450 U.S. at

188–89. Our reviewing court further emphasizes that “[e]ligibility and novelty are separate inquiries.” *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017); *see also Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1263 (Fed. Cir. 2016) (holding that “[e]ven assuming” that a particular claimed feature was novel does not “avoid the problem of abstractness”).

The Federal Circuit held in *BASCOM* that the claimed Internet content filtering, which featured an implementation “versatile enough that it could be adapted to many different users’ preferences while also installed remotely in a single location,” expressed an inventive concept in “the non-conventional and non-generic arrangement of known, conventional pieces.” *BASCOM*, 827 F.3d at 1346, 1350.

Here, Appellants have not shown a non-conventional, non-generic arrangement regarding the generic (known, conventional) non-transitory computer-readable medium having instructions stored thereon, processor, and “receiving an input” recited in claim 1. Therefore, we agree with the Examiner that Appellants’ claims do not involve any improvements to another technology, technical field, or improvements to the functioning of the computer itself as was seen in *Bascom*. *See* Final Act. 4–5.

For these reasons, we are not persuaded by Appellants’ arguments that claim 1 improves the functioning of the computer itself or any other technology or technical field.

Accordingly, we determine the abstract idea is not integrated into a practical application and the claims are directed to the abstract idea. Therefore, we proceed to Step 2B.

Step 2B — Inventive Concept

Having determined claim 1 is directed to an abstract idea that is not integrated into a practical application, we now evaluate whether the additional elements add a specific limitation that is not well-understood, routine, or conventional activity in the field, or simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the abstract idea. *See* 2019 Guidance.

Here, the Examiner determined, and we agree, that the only elements beyond the abstract idea are generic computer components used to perform generic computer functions (Final Act. 5)—a determination that is supported by Appellants’ Specification (*see, e.g.*, Spec. ¶¶ 67–68). Appellants’ Specification, for example, describes “[a] computer-readable medium [as] . . . ‘any available medium that can be accessed by processor 22,’” without describing the particulars. Spec. ¶ 68. The Specification also describes that processor 22 “may be any type of general or specific purpose processor.” *Id.* ¶ 67. Moreover, courts have recognized “receiving an input” as a well-understood, routine, or conventional function when claimed in a generic manner. *See, e.g., OIP Techs., Inc., v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (sending messages over a network); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (computer receives and sends information over a network); *see also* MPEP § 2106.05(d).

We also note the Examiner provided in the record a list of computer functions and found that the listed generic computer functions are well-understood, routine, and conventional (WURC) functions. Final Act. 5. The Examiner’s Final Office Action (dated Dec. 14, 2016) was mailed before

Berkheimer v. HP Inc., 881 F.3d 1360 (Fed. Cir. 2018), was decided on February 8, 2018 and before the USPTO April 19, 2018 *Berkheimer* Memorandum, entitled CHANGES IN EXAMINATION PROCEDURE PERTAINING TO SUBJECT MATTER ELIGIBILITY, RECENT SUBJECT MATTER ELIGIBILITY DECISION (*BERKHEIMER V. HP, INC.*) (“USPTO *Berkheimer* Memorandum”).

Appellants have not substantively and persuasively traversed the Examiner’s findings in the Appeal Brief or in the Reply Brief. In reviewing the record, we recognize that Appellants did not have the opportunity to argue *Berkheimer* in support of their appeal, until after *Berkheimer* was decided by the Federal Circuit on February 8, 2018, which occurred after the Reply Brief was filed on August 1, 2017. Because *Berkheimer* (881 F.3d at 1369) and the USPTO *Berkheimer* Memorandum are intervening authorities, Appellants are permitted to argue any new issues related to *Berkheimer* in a Request for Rehearing, under our procedural rule. *See* 37 C.F.R. § 41.52(a)(2) (“Appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.”).

However, on the record before us, Appellants have not shown that the claims on appeal add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)).

Accordingly, the additional elements, when viewed alone and in combination, merely amount to generic computer components performing generic computer functions that are well understood, routine, and conventional in the industry, and do not amount to significantly more than the abstract idea. Independent claims 11 and 16 are similar to claim 1 and are ineligible for similar reasons. The dependent claims serve to embellish

the abstract idea and do not confer eligibility on the claimed invention.

Appellants' argument that the claims do not preempt an abstract idea (App. Br. 20) is also not persuasive. Preemption is not the sole test for patent eligibility, and any questions on preemption in the instant case have been resolved by the Examiner's *Alice* analysis. As our reviewing court has explained: "questions on preemption are inherent in and resolved by the § 101 analysis," and, 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); *cf. OIP Techs.*, 788 F.3d at 1362–63 ("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.").

In view of the above, we sustain the § 101 rejection of independent claim 1, independent claims 11 and 16 as these claims recite similar limitations to claim 1 and are not argued separately, and dependent claims 2–10, 12–15, and 17–20, as these claims are not argued separately.

Rejection of Claims 1–20 under 35 U.S.C. § 103(a)

Appellants contend the Examiner erred because the cited portions of *Maes* and *Christfort* fail to teach or suggest the limitations "generating a transformation sequence using the selected process logic" and "dynamically generating a runtime process flow comprising a customized output from the input based on the transformation sequence and the metadata," as recited in independent claim 1 and similarly recited in independent claims 11 and 16. App. Br. 22.

We are not persuaded that the Examiner erred. The Examiner mapped the claim limitations to paragraphs 70–72 of Christfort. Ans. 14. Appellants have not persuasively rebutted the Examiner’s findings.

The Examiner found Christfort teaches “selecting a process logic at runtime from a set of selectable process logic” where, in Christfort, the user selects an application, such as a map service provider. *Id.* (citing Christfort ¶ 70). Appellants’ argument that “[t]here is no application selection” in Christfort is conclusory, merely reciting the claim limitation, the teachings of Christfort, and stating that the two are not the same. Reply Br. 11 (internal quotation marks omitted). Rule 41.37 “require[s] more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.” *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

Appellants’ arguments regarding the limitation “generating a transformation sequence” are similarly conclusory. Appellants argue the Examiner erred in mapping “generating a transformation sequence” to Christfort’s generation of generic output, but Appellants do not provide a persuasive basis for that argument. Rather, Appellants argue in a conclusory manner that “Christfort discloses the generation of ‘generic output.’” However, the cited portion of Christfort fails to disclose a generation of a ‘transformation sequence’ as claimed.” *See* Reply Br. 12 (emphasis omitted).

For these reasons, we are not persuaded that the Examiner erred in determining the combination of Maes and Christfort teaches or suggests the disputed limitations of claim 1.

Accordingly, we affirm the Examiner's § 103(a) rejection of independent claim 1, the § 103(a) rejection of independent claims 11 and 16, and the § 103(a) rejection of dependent claims 2–5, 7, 9, 10, 12, 13, 15, 17, 18, and 20. We also affirm the Examiner's § 103(a) rejection of dependent claims 6, 8, 14, and 19, not argued separately with particularity. *See* App. Br. 25–26.

Provisional Rejection of Claims 1–20

Claims 1–20 stand provisionally rejected on the ground of nonstatutory double patenting as unpatentable over claims 1–20 of copending US Application No. 13/936,588 in view of claims 1–20 of copending US Application No. 13/936,567. Final Act. 11–12.

Appellants present no arguments addressed to the merits of the rejection, but request the rejection be held in abeyance. *See* Reply Br. 2. Accordingly, we affirm, *pro forma*, the Examiner's provisional rejection of claims 1–20 on the ground of nonstatutory double patenting.

DECISION

We affirm the decision of the Examiner rejecting claims 1–20.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED