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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/604,119	01/23/2015	Gage Rindt	40125/07501	4916

30636 7590 07/19/2018

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ART UNIT	PAPER NUMBER
3662	

MAIL DATE	DELIVERY MODE
07/19/2018	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GAGE RINDT, RON DUNSKY, and JAMES BARRY

Appeal 2017-010483
Application 14/604,119
Technology Center 3600

Before MICHAEL L. HOELTER, BENJAMIN D. M. WOOD, and ALYSSA A. FINAMORE, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The claims are directed to a method and system for providing market share information for aviation fixed base operators (FBOs). Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A method, comprising:
>
> detecting, by a processor, for each of a plurality of aircraft during a time period, a corresponding plurality of ground positions;
>
> generating, by the processor, for each of the plurality of aircraft, a path based on the corresponding plurality of ground positions;
>
> comparing, by the processor, each of the plurality of paths to each of a plurality of bounding boxes, each of the plurality of bounding boxes denoting a perimeter of a corresponding one of a plurality of fixed base operators ("FBOs");
>
> generating, by the processor, a record of an FBO visit for each crossing of one of the paths into one of the bounding boxes, the record including an identity of the aircraft corresponding to the one of the paths and an identity of the one of the FBOs corresponding to the one of the bounding boxes; and
>
> determining, by the processor, market share data for each of the plurality of FBOs during the time period.

REJECTION

Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

Based on Appellants' arguments (App. Br. 6–13), we will decide the appeal on the basis of representative claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

Having considered all of Appellants' arguments and any evidence presented, we are not persuaded that the Examiner erred in rejecting claims 1–20 as directed to patent-ineligible subject matter. We address specific arguments for emphasis in our analysis below.

To determine whether a claim falls within a judicially recognized exception to patent eligibility under 35 U.S.C. § 101, we apply the two-step framework set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), and reaffirmed in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014). For the first step, we determine whether the claims at issue are directed to a patent-ineligible concept such as an abstract idea, law of nature, or natural phenomenon. *Alice*, 134 S. Ct. at 2355 (citing *Mayo*, 566 U.S. at 78–79). If so, we advance to the second step where "we consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application" of the otherwise patent-ineligible concept. *Id.* (quoting *Mayo*, 566 U.S. 78–79). The Court has described this second step "as 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." *Id.*

(citing *Mayo*, 566 U.S. at 72–73) (internal quotation marks and alterations omitted).

Step One

The Examiner determines that independent claim 1 is "directed to an abstract idea of comparing new and stored information and using rules to identify options." Final Act. 7. In the Answer the Examiner further determines that the claims are "directed to the concept of determining market share data . . . which is merely an abstract idea." Ans. 4. The Examiner explains that the claimed concept "is similar to the concepts of collecting information, analyzing it, and displaying certain results of the collection and analysis," which our reviewing court found to be abstract ideas in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). Ans. 4.

Appellants respond that the claims "are not directed to an abstract idea for at least the same reasons provided by the Federal Circuit in . . . *McRO, Inc. v. Bandai Namco Games Am. Inc.*"[1] App. Br. 6. According to Appellants, the claims are directed to an "automated method of determining market share data for fixed business operators ('FBOs')" that uses "the unconventional steps of generating path data for aircraft and comparing said data with the theoretical bounds denoting a perimeter of a fixed based operator to determine if and when the aircraft uses the FBO's services." *Id.* at 8. Appellants assert that "[t]his is a highly unconventional way to generate market share data" that "utiliz[es] a tracking system and comparing

[1] 837 F.3d 1299 (Fed. Cir. 2016).

the data received from the tracking system with the physical boundaries of the FBOs." *Id.*

We agree with the Examiner that claim 1 is directed to an abstract idea. Claim 1 is directed to a method of collecting and analyzing aircraft ground-position data to determine FBO market share data. The claimed method comprises receiving aircraft ground position data, generating path data from the position data, comparing the path data to an FBO facility perimeter to determine if the aircraft visited the FBO, and using the visit data to determine FBO market-share data. *See* App. Br. 15 (Claims App.). As our reviewing court held in *Electric Power*, claims directed to gathering and analyzing information are directed to an abstract idea. *Electric Power*, 830 F.3d at 1353–54. That the method may be "unconventional" does not change this result. *See SAP America, Inc. v. Investpic, LLC*, 890 F.3d 1016, 1018 (Fed. Cir. 2018) (holding that novel and nonobvious claims may still be ineligible under 35 U.S.C. § 101).

The *McRO* decision is not to the contrary. In *McRO*, the court directs us to "look to whether the claims in these patents focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO*, 837 F.3d at 1314 (citations omitted). The court determined that claim 1 in that case "is directed to a patentable, *technological* improvement," and "achieve[s] an improved *technological* result." *Id.* at 1316 (emphasis added). In the present case, however, the asserted improvement is to a method of determining FBO market share, not to an improvement in computer technology. Therefore, *McRO* is not applicable to this case.

Step Two

The Examiner determines that the claims "do not include additional elements that are sufficient to amount to significantly more than the judicial exception." Final Act. 7. In the Answer the Examiner explains that "[t]he only additional limitation[] in the claims is a processor," and the processor "is generically recited and can merely be a general purpose computer that performs basic computer functions of detecting, generating, and comparing data, which are all well-understood, routine and conventional." Ans. 5.

Appellants respond that the claims "recite significantly more than the abstract idea alleged by the Examiner . . . in light of the reasoning provided by the Federal Circuit in [*BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)]." App. Br. 9–10. Appellants assert that "[s]imilar to *BASCOM*, claim 1 recites a specific method of obtaining market share data that cannot be said to be conventional or generic." *Id.* at 10. According to Appellants, "[c]laim 1 is not the mere automation of the[] steps that a human would perform" to obtain FBO market share data, but rather "recites the detection and construction of the paths of the aircraft and a digital comparison of this data to theoretical bounds denoting the perimeters of FBOs, and generating market share data from the aggregated information over a given span of time." *Id.* at 11.

We agree with the Examiner that the additional limitations of claim 1 do not add significantly more to the abstract idea to which claim 1 is directed. Notably, Appellants do not expressly dispute the Examiner's finding that the processor recited in claim 1 "is generically recited and can merely be a general purpose computer that performs basic computer functions of detecting, generating, and comparing data, which are all well-

understood, routine and conventional." Ans. 5. "The Court in *Alice* made clear that a claim directed to an abstract idea does not move into section 101 eligibility territory by 'merely requir[ing] generic computer implementation.'" *buySAFE, Inc. v. Google, Inc.*, 765 F.3d. 1350, 1354 (Fed. Cir. 2014) (quoting *Alice*, 134 S. Ct. at 2357). Here, likewise, claim 1's recitation of a processor does not add significantly more to the abstract idea of obtaining and using aircraft position data to determine FBO market share.

BASCOM is not to the contrary. In *BASCOM*, the claims were directed to "a *technical* improvement over prior art ways of filtering [Internet] content." *BASCOM*, 827 F.3d at 1350 (emphasis added). The court determined that "the claims may be read to improve an existing *technological* process." *Id.* at 1351 (emphasis added) (internal citations and quotation marks omitted). The same cannot be said here. Claim 1 may be directed to an improved method for determining FBO market-share data, but the claims are not limited to a particular improved technical means for doing so. As such, claim 1 is more like the claims at issue in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014), which are "directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before." *Id.* at 715–16. The *Ultramercial* claims were determined to be patent-ineligible because "the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity." *Id.* at 715.

Finally, Appellants assert that claim 1 is similar to the hypothetical claim determined to be patent eligible in example 36 of the USPTO document "Subject Matter Eligibility Examples: Business Methods" (Dec.

15, 2016). In example 36, the claim determined to be patent eligible recited "a high resolution video camera array with overlapping views to track items of inventory [that] was not well-understood, routine, conventional activity to those in the field of inventory control." *Id.* at 16. The claimed video camera array "provides the *technological* solution to the *technological* problem of automatically tracking objects and determining their physical position using a computer vision system." *Id.* (emphasis added). But claim 1 in this case is not limited to a particular technological solution, as discussed above.

DECISION

For the above reasons, the Examiner's rejection of claims 1–20 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