UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/247,424	04/08/2014	Todd E. Kaplinger	RSW920140037US1	4047

58139	7590	06/19/2018

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ART UNIT	PAPER NUMBER
2165	

NOTIFICATION DATE	DELIVERY MODE
06/19/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TODD E. KAPLINGER, GAL SHACHOR, AND
GREGORY L. TRUTY[1]

Appeal 2017-010842
Application 14/247,424
Technology Center 2100

Before ROBERT E. NAPPI, JOHN D. HAMANN, and SCOTT E. BAIN
Administrative Patent Judges.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the
Examiner's non-final rejection of claims 8 through 21. We have jurisdiction
under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellants, the real party in interest is International Business
Machines Corporation. Appeal Br. 1.

INVENTION

Appellants' disclosed invention is directed to integrating a mobile payment application with other applications. Abstract. Claim 8 is representative of the invention and reproduced below.

> 8.   A computer program product for integrating a mobile payment application with other applications utilizing analytic analysis, the computer program product comprising a computer readable storage medium having program code embodied therewith, the program code comprising the programming instructions for:
>
>   tracking user usage of applications on a mobile computing device, wherein said applications comprise said mobile payment application deployed on said mobile computing device;
>
>   applying analytic analysis to said tracked user usage of applications to identify data and actions to sync between said mobile payment application and other applications on said mobile computing device; and
>
>   syncing said data and actions between said mobile payment application and other applications on said mobile computing device as a user of said mobile computing device accesses said applications.

REJECTION AT ISSUE[2]

The Examiner has rejected claims 8 through 21 under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. Non. Final 4–8.

PRINCIPLES OF LAW

Patent-eligible subject matter is defined in 35 U.S.C. § 101 of the Patent Act, which recites:

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[2] Throughout this Decision we refer to the Appeal Brief (Appeal Br.) filed May 22, 2017, Reply Brief (Reply Br.) filed August 17, 2017, Non Final Office Action (Non. Final) mailed March 8, 2017, and the Examiner's Answer (Answer) mailed June 28, 2017.

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in 35 U.S.C. § 101: laws of nature, natural phenomena, and abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012). Although an abstract idea itself is patent ineligible, an application of the abstract idea may be patent eligible. *Alice*, 134 S. Ct. at 2355. Thus, we must 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." *Id.* (citing *Mayo*, 566 U.S. at 78–80). The claim must contain elements or a combination of elements that are "'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [abstract idea] itself.'" *Id.* (citing *Mayo*, 566 U.S. at 72–73).

The Supreme Court sets forth a two-part "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. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. *Mayo*, 566 U.S. at 76–77. If so, 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. *Id.* The court has described step two of this analysis 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.* at 71–73.

Under the second step of the *Alice/Mayo* framework, we examine the claim limitations "more microscopically," (*Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016)), to determine whether they contain "additional features" sufficient to "'transform the nature of the claim' into a patent-eligible application." *Alice*, 134 S. Ct. at 2355, 2357 (quoting *Mayo*, 566 U.S. at 78). "Mere recitation of concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract idea. Rather, the components must involve more than performance of well-understood, routine, conventional activit[ies] previously known to the industry." *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2359).

ANALYSIS

We have reviewed Appellants' arguments in the Briefs, the Examiner's rejections, and the Examiner's response to Appellants' arguments. Appellants' arguments have not persuaded us of error in the Examiner's conclusion that the claims are directed to patent-ineligible subject matter or that the claims are obvious over the prior art.

Independent claims 8 and 16

Appellants argue on pages 4 through15 of the Appeal Brief and pages 2 through 9 of the Reply Brief that the claims are not drawn to an abstract

idea as they are not directed to a mental process or an mathematical relationship/formula.

The Examiner has provided a detailed response to each of Appellants' arguments on pages 7 through 18 of the Answer. We have reviewed the Examiner's findings, and response to Appellants' arguments, and concur with the Examiner that representative claim 8 recites an abstract concept.

We add the following for clarity. The Examiner finds "a user could perform functions with a pen and paper and make comparisons to transmit data between applications based on mental process or pen and paper tracking and analysis." Answer 10. We concur that claim 8 recites a step of tracking a user's use of mobile applications, as the user is making use of the application. Because a user is able to track their own use of the application either mentally or by recording the action with pencil and paper, the limitation encompasses a mental step. Claim 8 also recites a step of "applying analytic analysis" to the tracked user actions to identify data and actions. The Examiner finds that this is merely a step of gathering data, where the user logs data of the usage either mentally or with a pen and paper. Answer 10–11. We concur, as the language of the claim indicates the analytic analysis is to identify data (gather data). The Examiner further notes:

> The Specification provides that the analytic analysis "may involve analytic code" and is used to capture data and actions "that would be utilized by the mobile payment application." However, the Specification does not specifically provide the manner in which the analytic code makes the determination of which data and actions to capture. The analytic code is considered to be some sort of mathematical analysis and appears to be the only example within the Specification to support the claim limitation "to identify data and actions to

> sync between said mobile payment application and other a
> applications." In the alternative, the absence of the a
> mathematical algorithm being present further supports that the
> claims are abstract, because the steps are simply the
> organization and comparison of data, which can be performed
> mentally and or can be considered to be an idea of itself. Int.
> Ventures v. Cap One Financial and Digitech [792 F3d 1363
> (Fed. Cir. 2015)].

Answer 11 (referring to paragraphs 0013, 0041 and Fig. 3 of Appellants'
Specification). The forgoing supports the Examiner's alternative
interpretation of the claimed "analytic analysis" as reciting a mathematical
algorithm. Answer 13.

Finally, claim 8 recites a step of "synching said data and actions"
between the mobile payment application and other applications, which the
Examiner finds merely recites a user performing data entry to update
information at two applications. Answer 11. Additionally, the Examiner
finds that "synching is well-understood, routine and conventional" and it
provides a means of storing data and as such is an insignificant post solution
activity. Answer 14. We concur, and additionally note that these claims are
similar to those held abstract by the court in *Electric Power Group*, 830 F.3d
at 1354 (holding that claims directed to a process of gathering and analyzing
information of a specific content are directed to an abstract idea) and
*Content Extraction and Transmission LLC. v. Wells Fargo Bank, Nat'l
Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding that the claims were
"drawn to the abstract idea of 1) collecting data, 2) recognizing certain data
within the collected data set, and 3) storing that recognized data in a
memory."). Here, the claimed step of tracking user actions is a step of
collecting data, the claimed step of analytic analysis is similar to a step of

recognizing certain data within the collected data and the claimed step of storing is syncing the data is similar to storing data.

Appellants' arguments on pages 4 through 8 of the Brief, which rely upon *CyberSource Corp. v. Retail Decisions Inc.,* 654 F.3d 1366, 1371 (Fed. Cir. 2011) are not persuasive of error. Appellants assert that the Examiner's rejection is in error as tracking usage of applications, performing analytic analysis and syncing the data, "cannot be accomplished in the human mind or by a human using a pen and paper in any reasonable amount of time and with any reasonable expectation of accuracy without the use of a computer." App. Br 4–8. These arguments are not persuasive, because *CyberSource* did not identify that abstract mental processes become patent eligible when implementation on a computer increases speed and accuracy or the process. Rather, our reviewing court has said:

> Nor, in addressing the second step of Alice, does claiming the improved speed or efficiency inherent with applying the abstract idea on a computer provide a sufficient inventive concept. See *Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.,* 687 F.3d 1266, 1278 (Fed.Cir.2012) ("[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter."); *CLS Bank, Int'l v. Alice Corp.,* 717 F.3d 1269, 1286 (Fed.Cir.2013) (en banc) aff'd, —— U.S. ——, 134 S.Ct. 2347, 189 L.Ed.2d 296 (2014) ("[S]imply appending generic computer functionality to lend speed or efficiency to the performance of an otherwise abstract concept does not meaningfully limit claim scope for purposes of patent eligibility." (citations omitted)).

Intellectual Ventures I LLC v. Capital One Bank 792 F3d 1363, 1367 (Fed. Cir. 2015). Appellants' arguments on pages 9 through 12 of the Appeal Brief, that the claims do not recite a mathematical algorithm, are similarly

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not persuasive of error. As discussed above, the Examiner made this finding in the alternative, based upon the disclosure of the "analytic analysis" in Appellants' Specification.

Appellants additionally argue that the claims are directed to an improvement in computer capabilities or an improvement of an existing technological process. App. Br. 23-27 (citing *Enfish v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) and Reply Br.14–15. Specifically, Appellants argue:

> Appellant respectfully asserts that Appellant's claimed invention is directed to improvements to another technology or technical field. In the instant application, the inventors have improved the technology in the integration of mobile payment applications with other mobile applications, and more particularly, have provided a means for seamlessly integrating the mobile payment application with other mobile applications by utilizing analytic analysis using the claim limitations of claims 8-21. See, e.g., paragraphs [0013 and 0029] of Appellant's specification. Therefore, Appellant's claimed invention amounts to significantly more than organizing and comparing data as alleged by the Examiner.

App. Br. 25–26.

We are not persuaded of error by these arguments, as the claims do not recite a seamless integration of the mobile payment application Thus, Appellants have not demonstrated error in the Examiner's conclusion that representative claim 8 recites an abstract idea and does not recite significantly more.

Dependent claims

Claims 9 and 16.

Appellants argue that the Examiner has not explained how the a assigning a user identification to the mobile device and receiving the user identification from a user to access the application, as recited in claims 9 and 16 is directed to an abstract idea . Appeal Br. 15–16, Reply Br. 10.

The Examiner finds that the claim 9 limitation relating to assigning a user identification and receiving the user identification to gain access to an application is a conventional computer process of accessing data. Non. Final 6, Answer 18.

We concur with the Examiner that the claim 9 limitation directed to a receiving a user identification to gain access is a conventional technique to control access and maintain security (e.g., providing an account number and pin to access a bank account, providing personal identification number (PIN) and password to login to a computer system). As such we find that the limitations of dependent claim 9 are directed to the use a conventional or generic function of a computer. "[T]he use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent eligible subject matter." *FairWarning IP v. Iatric Sys. Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014)). Accordingly, we are not persuaded of error in the Examiner's rejection of claims 9 and 16.

Claims 10 and 17

Appellants argue that the Examiner has not explained how the claims 10 and 17 limitation directed to "applying said analytic analysis to said tracked user usage of applications to identify data and actions to sync between said mobile payment application and other applications on other

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computing devices associated with said assigned user identification" is
directed to an abstract idea. Appeal Br. 16–18, Reply Br. 10–11.

We are not persuaded of error by these arguments. As discussed
above, with respect to claim 8, we concur with the Examiner, that the
claimed "analytic analysis" and "sync" are directed to an abstract idea and
do not recite significantly more. Accordingly, we sustain the Examiner's
rejection of claims 10 and 17.

Claims 11 and 18

Appellants argue that the Examiner has not explained how the claims
11 and 18 limitation directed to "presenting suggestions to said user of said
mobile computing device based on said analytic analysis" is directed to an
abstract idea. Appeal Br. 18–19, Reply Br. 11–12.

We are not persuaded of error by these arguments. We, like the
Examiner, find the limitations that are directed to presenting suggestions
(data) to the user based upon the analytic analysis, do not recite significantly
more than the abstract concept in the claims. As discussed above claims
directed to a process of gathering and analyzing information of a specific
content are directed to an abstract idea. *Content Extraction and
Transmission LLC. v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347
(Fed. Cir. 2014) (holding that the claims were "drawn to the abstract idea of
1) collecting data, 2) recognizing certain data within the collected data set,
and 3) storing that recognized data in a memory."). Further, the limitation
directed to displaying the data does not recite significantly more. "Merely
selecting information by content or source, for collection, analysis, and
display" is not reciting significantly more. *Electric Power Group*, 830 F.3d

at 1355. Thus, Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 11 and 18.

Claims 12, 13, 14, 19, 20, and 21

Appellants argue that the Examiner has not explained how the claims 12 and 19 limitation directed to "wherein said data to be synced between said mobile payment application and other applications on said mobile computing comprises one or more following" is directed to an abstract idea. Appeal Br. 19–22, Reply Br. 12–14.

We are not persuaded of error by these arguments. As discussed above, with respect to claim 8, we concur with the Examiner, that the claimed "analytic analysis" and "sync" are directed to an abstract idea and do not recite significantly more. Further, the limitations directed to the type of data being analyzed and synched does not recite significantly more. As discussed above "[m]erely selecting information by content or source, for collection, analysis, and display" is not reciting significantly more. *Electric Power Group*, 830 F.3d at 1355. Thus, Appellants' arguments have not persuaded us of error and we sustain the Examiner's rejection of claims 12, 13, 14, 19, 20, and 21.

DECISION

We sustain the Examiner's rejections of claims 8 through 21 under 35 U.S.C. § 101 and 35 U.S.C. § 103(a).

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)(iv)(2015).

AFFIRMED