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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LAURENCE ROSE and DEAN P. ALDERUCCI

Appeal 2017-011000
Application 12/439,030¹
Technology Center 3600

Before ST. JOHN COURTENAY III., JASON J. CHUNG, and
JOYCE CRAIG, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 3–5, 50, 52–54, 56, 57, 60–63, and 65.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention is directed to request-for-quote (“RFQ”) systems and methods in which quotes received in response to a RFQ are held until a condition is met and only released for display when that condition is met.

Abstract. Claim 65 is illustrative of the invention and is reproduced below:

¹ According to the Appellants, CFPH, LLC is the real party in interest. App. Br. 3.

² Claims 1, 2, 6–49, 51, 55, 58, 59, and 64 are canceled. App. Br. 15–16.

65. A request for quote (RFQ) management system comprising:

a management server configured to evaluate and organize a plurality of RFQs for a product by:

receiving a first RFQ of the plurality of RFQs from a first submitter;

for the first RFQ of the plurality of RFQs determining a first condition for quotes for the first submitter, in which the first condition includes receiving a minimum number of quotes in response to the first RFQ;

receiving a second RFQ of the plurality of RFQs from a second submitter;

for the second RFQ of the plurality of RFQs determining a second condition for quotes for the second submitter, in which the second condition includes a minimum amount of time passing after receiving the second RFQ;

compute that the first condition has been met before transmitting first display signals for displaying first quotes to a first user; and

compute that the second condition has been met before transmitting second display signals for displaying at least one second quote to a second user;

a display system having primary display means, the display system being configured to provide a primary display of the plurality of first quotes on the primary display means in response to the first display signals;

a plurality of handheld devices, each handheld device having secondary display means and input means; and

communication controller for enabling communication between the management server and each handheld device.

REJECTION AT ISSUE³

Claims 3–5, 50, 52–54, 56, 57, 60–63, and 65 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Ans. 2–6.

ANALYSIS

1. *The Examiner’s Conclusions and Appellants’ Arguments*

The Examiner concludes that the present claims are directed to an abstract idea of an idea of itself; similar to the abstract idea of collecting information, analyzing it, and displaying certain results of the collection and analysis in the case of *Electric Power Grp, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir, 2016). Ans. 3. Also, the Examiner concludes that the present claims are directed to an abstract idea of collecting, displaying, and manipulating data in the case of *Intellectual Ventures v. Capital One Financial*, 850 F.3d 1332 (Fed. Cir, 2017). Ans. 3.

In addition, the Examiner determines the present claims are not significantly more than any abstract idea because the Examiner finds they implement instructions using generic computer components that are well-understood, routine, and conventional. Ans. 5 (citing Spec. ¶ 16).

Appellants argue the Examiner fails to make a *prima facie* showing that the present claims are directed to an abstract idea because the Examiner does not cite any similar concepts or cases. App. Br. 7–9; Reply Br. 2–3. And Appellants argue the present claims are not directed to an abstract idea because, for the same reasons as the Federal Circuit held in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) and *Trading Technologies*

³ The rejections under 35 U.S.C. § 112, first paragraph and second paragraph are withdrawn. Ans. 2.

International Inc., v. CQG, Inc., 675 F. App'x 1001 (Fed. Cir. 2017) (non-precedential), a trading interface that improves the speed, usability, and efficiency of a trading system is patent eligible subject matter that is not directed to an abstract idea. App. Br. 9–10; Reply Br. 4. Appellants also argue “[t]he present claims recite an improvement in computer functionality and do not include any preemption risk of the abstract idea.” App. Br. 10; Reply Br. 4.

Appellants argue the Examiner fails to make a *prima facie* showing that the present claims are significantly more than any abstract idea because there is no prior art rejection and the presence of a generic computer is not sufficient evidence that the present claims are not significantly more than an abstract idea. App. Br. 10–12; Reply Br. 4–6. Furthermore, Appellants argue the present claims are significantly more than any abstract idea because they improve the functioning of the computer itself similar to *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016), and *Trading Technologies*. App. Br. 12–13; Reply Br. 6–7. We disagree with Appellants.

2. *Legal Principles*

Regarding Appellants’ argument that the Examiner did not present a *prima facie* case of patent ineligibility (App. Br. 7–12; Reply Br. 2–6), patent eligibility under 35 U.S.C. § 101 is a question of law that is reviewable *de novo*. See *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). We are aware of no controlling authority that requires the Examiner to provide factual evidence under step one of the *Alice* framework

to support a determination that a claim is directed to an abstract idea. The Federal Circuit has repeatedly noted that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The Examiner satisfies the burden of establishing a *prima facie* case under 35 U.S.C. § 132 by setting forth a rejection in a sufficiently articulate and informative manner. *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). If the Examiner “adequately explain[s] the shortcomings . . . the burden shifts to the applicant to rebut the prima facie case with evidence and/or argument.” *Hyatt*, 492 F.3d at 1370. The Final Office Action adequately explains the § 101 rejection. *See* Final Act. 7–8. The Examiner’s statements satisfy § 132(a) because they apply the *Alice* analytical framework and apprise Appellants of the reasons for the § 101 rejection under that framework. Appellants have not responded by alleging a failure to understand the rejection. To the contrary, Appellants clearly identify the abstract idea identified by the Examiner. *See, e.g.*, App. Br. 8–9, 11–12.

Moreover, section 101 of the Patent Act provides “[w]hoever 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.” 35 U.S.C. § 101. The Supreme Court has long held that this provision contains an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589–90 (2013)). The

Court has set forth a two-part inquiry to determine whether this exception applies.

First, we must “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 134 S. Ct. at 2355. Second, if the claims are directed to one of those patent-ineligible concepts, 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.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–78 (2012)). Put differently, we must search the claims for an “inventive concept,” that is, “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*, 566 U.S. at 72–73).

3. *Based Upon a Preponderance of the Evidence, and our Review of the Record, we Disagree with Appellants’ Arguments*

a. *Alice Step 1*

On this record, we discern no error in the Examiner’s analysis and conclusion that the present claims are directed to an abstract idea of an idea of itself, similar to the abstract idea of collecting information, analyzing it, and displaying certain results of the collection and analysis in the case of *Electric Power*. Ans. 3. And we discern no error in the Examiner’s analysis and conclusion that the present claims are directed to an abstract idea of collecting, displaying, and manipulating data in the case of *Intellectual Ventures*. Ans. 3.

We, therefore, disagree with Appellants' argument that the holdings in *Trading Technologies* and *Enfish* should dictate how we decide this case (App. Br. 9–10; Reply Br. 4) because the subject claim in *Trading Technologies* was directed to a graphical user interface that prevents order entry at a changed price, and the subject claim in *Enfish* was directed to a self-referential logical table; whereas the present claims are directed to requesting quotes and receiving and displaying quotes in response. In addition, we conclude that the present claims are more similar to the claims in *Electric Power* and *Intellectual Ventures* than *Trading Technologies* and *Enfish*.

In particular, we disagree with Appellants' argument that, similar to *Trading Technologies*, the present claims demonstrates an improvement in speed, usability, and efficiency of computerized trading, which illustrate that the claims are not abstract (App. Br. 9–10; Reply Br. 4). In the non-precedential *Trading Technologies* case, the court's analysis focused on the interactive nature of the graphical user interface (GUI) and how the GUI improved the speed, usability, and efficiency of a trading system, whereas in the present case, the claims are not directed to how a GUI improves the speed, usability, and efficiency of a trading system. In particular, we note that accelerating a mental process with a processor does not make claims patent eligible. *Bancorp Servs., LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1279 (Fed. Cir. 2012) (“Using a computer to accelerate an ineligible mental process does not make that process patent-eligible.”). And we conclude that, while the present claims may recite improvements to abstract ideas, they do not recite improvements to computer functionality.

Additionally, we disagree with Appellants' argument that the present claims are patent eligible because they do not preempt any abstract idea (App. Br. 10; Reply Br. 4); while preemption may denote patent ineligibility, its absence does not demonstrate patent eligibility. *See FairWarning, IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016). For claims covering a patent-ineligible concept, preemption concerns "are fully addressed and made moot" by an analysis under the *Mayo/Alice* framework. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Because the present claims are directed to an abstract idea, we proceed to step (2) of the *Alice*, two-part test.

b. Alice Step 2

On this record, we discern no error in the Examiner's analysis and determination that present claims are not directed to significantly more than any abstract idea because they implement generic components that are well-understood, routine, and conventional. Ans. 5 (citing Spec. ¶ 16). In particular, paragraph 16, paragraph 31, page 27, lines 23–26, page 32, lines 8–15 discuss the generic and conventional nature of the hardware components used to implement the abstract idea. Spec. 27:23–26, 32:8–15, ¶¶ 16, 31.

We, therefore, disagree with Appellants that the present claims improve the functioning of the computer or the Internet in a manner similar to *DDR*, *BASCOM*, *Amdocs*, and *Trading Technologies*⁴ (App. Br. 12–13;

⁴ We characterize *Trading Technologies* as an *Alice* step 1 issue rather than *Alice* step 2. Nonetheless, we conclude the claims are directed to an abstract idea without significantly more for the reasons discussed herein.

Reply Br. 6–7) because we conclude the present claims are directed to a solution to an abstract idea discussed *supra* that implements the abstract idea merely using generic and conventional computer components.

Appellants do not argue separately claims 3–5, 50, 52–54, 56, 57, 60–63, and 65 with particularity. App. Br. 7–14. Accordingly, we sustain the Examiner’s rejection of independent claims 3–5, 50, 52–54, 56, 57, 60–63, and 65 under 35 U.S.C. § 101.

We have only considered those arguments that Appellants actually raised in the Briefs. Arguments Appellants could have made, but chose not to make, in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner’s decision rejecting claims 3–5, 50, 52–54, 56, 57, 60–63, and 65 under 35 U.S.C. § 101.

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