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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN C. BELL and COLM M. KEENAN
(Applicant: Pilot Catastrophe Services, Inc.)

Appeal 2017-011148
Application 13/969,329¹
Technology Center 3600

Before DENISE M. POTHIER, BETH Z. SHAW, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–13, 15–18 and 20. Claims 14 and 19 are cancelled. We have jurisdiction over the pending rejected claims under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Pilot Catastrophe Services, Inc. as the real party in interest. (App. Br. 2.)

THE INVENTION

Appellants' disclosed and claimed invention is directed to an insurance claim report generating system which makes use of an interactive voice response (IVR) system, a voice recognition server, and a voice activated database (VAD) device. (Abstract.)

Independent claim 1, reproduced below, is illustrative of the subject matter on appeal:

1. A method to generate an electronic insurance claim report, comprising:

configuring an interactive voice response (IVR) system to:

receive a telephone call from a remote device;

deliver, to the remote device, an audio script having prompts in response to the received telephone call and in further response to data received from the remote device, the prompts associated with a template used to generate the electronic insurance claim report;

receive at least one of dual-tone, multi-frequency (DTMF) signaling tone information and human voice information in response to the prompts; and

store an entire audio recording of the telephone call;

configuring a voice recognition server to generate text from human speech, the voice recognition server arranged to statistically match phonemes of the human speech to entries in a dictionary that includes insurance relevant terms, the voice recognition server configured to further generate a text-based transcript representing the entire audio recording of the telephone call;

configuring a voice activated database (VAD)
device to:

receive first digital information from the
IVR system, the first digital information derived
from the DTMF signaling tone information or
receive second digital information from the voice
recognition server, the second digital information
derived from the human voice information passed
through the voice recognition server; and

generate the electronic insurance claim
report from at least some of the first or second
digital information;

provide concurrent access to the entire audio
recording of the telephone call, a transcription file
of the text generated from the human speech, and
the electronic insurance claim report; and

accept user input to update the transcription
file and the electronic insurance claim report based
on the concurrent access to the entire audio
recording, the transcription file, and the electronic
insurance claim report; and

communicating the electronic insurance claim
report to a claims management device.

REJECTION

The Examiner rejected claims 1–13, 15–18 and 20 under 35 U.S.C.
§ 101 as being directed to non-statutory subject matter.² (Final Act. 2–6.)

Our review in this appeal is limited to the above rejection and the
issues raised by Appellants. Arguments not made in the Appeal Brief are
waived. *See* 37 C.F.R. § 41.37(c)(1)(iv)(2016).

² The rejections of the claims under pre-AIA 35 U.S.C. 103(a) as being
unpatentable over prior art references was withdrawn. (Ans. 5.)

ISSUE ON APPEAL

Appellants' arguments in the Appeal and Reply Briefs present the following issue:³

Whether the Examiner erred in finding claims 1–13, 15–18 and 20 as directed to non-statutory subject matter. (App. Br. 8–17; Reply Br. 2–7.)

ANALYSIS

The Examiner concludes claims 1–13, 15–18 and 20 are patent-ineligible under 35 U.S.C. § 101 because the claims are directed to the abstract idea of “generating an electronic insurance claim report,” and in particular, the abstract idea of:

configuring IVR system to receive calls, deliver or play an audio script with prompts where caller selects choices using DTMF, play more audio scripts based on the received DTMF, receive response from the caller, [and] record the DTMF and voice data of the caller, using voice/speech recognition software [to] generate text from the speech and transcribe[] the callers spoken information, [and] configur[ing] voice activated database to receive digital information from IVR system[and] generate insurance claim based on the transcribed human voice information.

(Final Act. 2–3.) The Examiner finds that there is nothing in the claims that is significantly more than this abstract idea because, “additional computer elements such as: voice recognition server, telephone/mobile device, IVR, PBX, and database which are recited at a high level of generality, provide

³ Rather than reiterate the arguments of Appellants and the positions of the Examiner, we refer to the Appeal Brief (filed May 15, 2017); the Reply Brief (filed Aug. 28, 2017); the Final Office Action (mailed Oct. 11, 2016); and the Examiner's Answer (mailed June 27, 2017) for the respective details.

conventional computer functions that do not add meaningful limits to practicing the abstract idea.” (*Id.* at 3.)

Appellants argue the instant claims are analogous to those considered in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), in that the claims are “‘directed to something narrower’ than simply a broad, abstract concept.” (App. Br. 12.) Appellants elaborate:

In the present case, the inventive concept includes the generation of an *electronic insurance claim report* over a network in reliance on interactive communication with a remote user device. The input information from the remote user may include DTMF signaling tones, voice information, or both DTMF tones and voice information, and a voice recognition server is configured to generate text from the voice information. This design provides benefits over traditional pen-and-paper report generation by generating a computer-based (*i.e.*, *electronic*) claim report in real time, and the system also provides for greater accuracy because a voice activated database (VAD) is configured to provide for *concurrent access to the entire audio recording of the telephone call and the electronic insurance claim report, user input to update the electronic insurance claim report based on the concurrent access to the entire audio recording and the electronic insurance claim report, and communication of the electronic insurance claim report to a claims management device. . . .* [T]he invention described in the present claims is a specific application and improvement to technologies in the marketplace that is not so abstract that it overrides the statutory language and framework of the Patent Act.

(*Id.* at 15–16.) For the first time in the Reply Brief, Appellants also argue, “the Examiner also provides no evidence that *a voice recognition server arranged to statistically match phonemes of the human speech to entries in a*

dictionary that includes insurance relevant terms is well-understood, routine, or conventional.” (Reply Br. 5.)

We agree with the Examiner that the subject matter of the claims at issue are directed to non-statutory subject matter. An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S. C. § 101. Here, independent claim 1 and its dependent claims are directed to a method, independent claim 11 and its dependent claims are directed to a system, and independent claim 15 and its dependent claims are directed to a non-transitory computer readable storage medium — each a process, machine or manufacture. However, the Supreme Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 598–99 (2013)). The “abstract ideas” category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice*, 573 U.S. at 216–217.

In *Alice*, the Supreme Court sets forth an analytical “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 217. The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* 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 v. Kappos*, 561 U.S. 593, 611 (2010)); mathematical concepts (*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, 191 (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 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If the claims are directed to a patent-ineligible concept, the second step in the *Alice/Mayo* analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). In other words, the second step is to “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.’” 573 U.S. at 217–218 (quoting *Mayo*, 566 U.S. at 72–73.) 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. 573 U.S. at 221. A transformation into a patent-eligible application requires more than simply stating the abstract idea while adding the words “apply it.” *Id.*

Further to the *Alice/Mayo* analytical framework, after the mailing of the Answer and the filing of the Briefs in this case, the USPTO published revised guidance on the application of Section 101. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019)

(hereinafter “Revised Guidance”). Under the Revised 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 activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office 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 Revised Guidance.

In evaluating the claims at issue, we consider claim 1 as representative, as Appellants provide no arguments that would differentiate the remaining claims. See 37 C.F.R. § 41.37(c)(1)(iv)(2016). As stated in the preamble, claim 1 is directed to “generat[ing] an . . . insurance claim report.” Each of the specific limitations of claim 1 elaborate on generating the insurance claim report, as set forth below (italicizing portions of the claim directed to additional technological elements that are discussed separately in more detail to follow): (i) “receive a telephone call from a remote device [*e.g.*, an insurance adjuster using a telephone]” (*via “an interactive voice response (IVR) system”*); (ii) “deliver, to the remote device,

a[] . . . script having prompts in response to the received telephone call and in further response to data received from the remote device, the prompts associated with a template used to generate the . . . insurance claim report”;

(iii) “receiv[ing] . . . human voice information in response to the prompts” (*and/or “dual-tone, multi-frequency (DTMF) signaling tone information”*);

(iv) “storing an entire audio recording of the telephone call”; (v) “generating a text-based transcript representing the entire audio recording of the telephone call” (*via a “voice recognition server arranged to statistically match phonemes of the human speech to entries in a dictionary that includes insurance relevant terms”*); (vi) (*by a “voice activated database,”*⁴) “receiv[ing] . . . the human voice information (*as “digital information . . . derived from . . . the voice recognition server” and “derived from the DTMF signaling tone information”*); (vii) “generat[ing] the . . . insurance claim report from at least some of the first or second . . . information” (*in “digital” form*); (viii) “provid[ing] concurrent access to the entire audio recording of the telephone call, a transcription file of the text generated from the human speech, and the . . . insurance claim report”; (ix) “accept[ing] user input to update the transcription file and the . . . insurance claim report based on the concurrent access to the entire audio recording, the transcription file, and the . . . insurance claim report”; and (x) “communicating the . . . insurance claim report to a claims management device.”

Apart from the use of generic technology (specified above in italics and discussed further below), each of these limitations describe activities that would normally be performed by an insurance adjuster or home-office

⁴ The Specification coins the term “voice activated database,” which, as discussed below, is simply a conventional database.

insurance personnel in generating an insurance claim report: limitations (i)–(iii) are directed to receiving information about the insurance claim pertinent to preparing a claim report; limitations (iv)–(v) involve maintaining a record of the received information; limitations (vi)–(vii) involve preparing the report from the received information; and limitations (viii)–(x) involve reviewing and updating the record and the report and sending it on.

As stated in the Revised Guidance, insurance transactions are an example of a fundamental economic practice. (Revised Guidance, 84 Fed. Reg. at 52). The applicable authorities are in accord. *E.g.*, *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (considering claims reciting “generalized software components arranged to implement an abstract concept . . . [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer”), *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (considering claims reciting the use of a computer “employed only for its most basic function, the performance of repetitive calculations,” to implement the abstract idea of managing a stable-value protected life insurance policy).

Thus, the subject matter of claim 1, preparation of an insurance claim report, is a fundamental economic practice, which is one of the certain methods of organizing human activity identified in the Revised Guidance. Therefore, we agree with the Examiner that the subject matter of claim 1 is directed to an abstract idea.

Further pursuant to the Revised Guidance, we consider whether there are additional elements set forth in claim 1 that integrate the judicial

exception into a practical application. Revised Guidance, 84 Fed. Reg. at 54–55. As indicated above, the abstract idea of claim 1 is carried out using various additional elements to facilitate the preparation of the electronic insurance claim report: a “remote device” (*e.g.*, a telephone); an interactive voice response (IVR) system; use of dual-tone, multi-frequency (DTMF) signaling tone information; a voice recognition server arranged to statistically match phonemes of the human speech to entries in a dictionary that includes insurance relevant terms; and digitalized information received by a voice activated database. (*See* App. Br. 11 (“claim 1 is directed toward generation of an electronic insurance claim report using an interactive voice system, a telephone call from a remote device, a voice recognition server that generates text from human speech, concurrent access to a recording of the telephone call and the electronic insurance claim report”))

None of these additional elements integrate the judicial exception into a practical application. In particular, whether taken individually or in combination, these additional technical elements do not reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field. Revised Guidance, 84 Fed. Reg. at 55. Although the use of an IVR system, signaling tone information, voice recognition, and a database facilitate the preparation of an electronic insurance claim report, as compared to the prior art manual approach described in Figure 1 of the Specification, “merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.” *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015); *see also Credit Acceptance Corp. v. Westlake Services*, 859 F.3d 1044, 1057

(Fed. Cir. 1057). Although, as Appellants argue, the subject matter of claim 1 “provides benefits over traditional pen-and-paper report generation,” Appellants provide only conclusory, unpersuasive assertions that the subject matter provides any improvements to technology. (App. Br. 15–16.)

Nor does the subject matter of claim 1 contain additional elements that implement the judicial exception with a “particular machine,” because the claims do not specify any particular IVR system, voice recognition server, database, or combination thereof. *See* MPEP § 2106.05 (b). Further, the method does not transform matter; at best it transforms information. *See* MPEP § 2106.05(c). Nor does claim 1 have any other meaningful limitations (MPEP § 2106.05 (e)), or any of the other considerations set forth in the Revised Guidance regarding a determination of whether additional elements integrate the judicial exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 55. Rather, the claim “merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea.” *Id.*⁵

Turning to the second step of the *Alice* inquiry, we do not agree with Appellants that additional elements of claim 1 add “significantly more” to the basic abstract idea encompassed by the claim sufficient to transform the claimed abstract idea into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. The record supports the Examiner’s finding that the additional elements — using an IVR system, signaling tone information, voice

⁵ As depicted in Figure 2A and accompanying description in the Specification, the interactive voice response (IVR) system; voice recognition server, and voice activated database consist of software on general purpose computing devices. (Spec. Figs. 2A, 3, 6:7–23, 32:27–34:8).

recognition server, and voice activated database — are well-understood, routine, and conventional, specified at a high level of generality. *See* Revised Guidance, 84 Fed. Reg. at 56. In particular, Appellants concede that “telephone calls, DTMF signaling, generating text from human speech, or simply generating a report,” are not inventive. (App. Br. 14.) Also, the voice activated database is simply a conventional database, for example a “Microsoft SQL Server,” that is accessed by the digital voice information generated during the operation of the IVR system. (Spec. 8:17–22, 14:17). Moreover, Specification merely refers to the use of an IVR system, signaling tone information, voice recognition server, and voice activated database by name, without any further elaboration, and suggests that these technologies are preexisting, routine tools that are adapted to the abstract idea of the claim. (*E.g.*, Spec. Figs. 2A, 3, 6:7–23, 32:27–34:8).

In addition, Franklin-Barr, which is of record, establishes that it was conventional to use an IVR system to detect and recognize user input, provide responses based on user input, and collect the caller input, where the input includes dual-tone multi frequency (DTMF) tones and/or spoken input digitized by a speech recognition module. (Franklin-Barr, et al., US 2011/0243310 A1, ¶¶ 10–11, 17.) As stated in that reference:

IVR applications may be utilized in various situations, including as an interface to a mapping system for an automobile or other vehicle. Exemplary IVR applications may also be used in telecommunications systems to support functionality including by way of example telephone banking, telephone voting, flight scheduling, movie ticket show-time retrieval, ticket purchase, and credit card transactions.

(*Id.* ¶ 10; *see also*, Hilborn, US2009/0240531 A1, ¶¶ 22–23).⁶ As discussed above, Appellants single out the use of “*a voice recognition server arranged to statistically match phonemes of the human speech to entries in a dictionary that includes insurance relevant terms*” as unconventional. (Reply Br. 5.) However, the IVR examples enumerated in Franklin-Barr adapt speech recognition to various applications, including banking, telephone voting, flight scheduling, movie ticket show-time retrieval, ticket purchase, and credit card transactions — indicating doing the same for the insurance field would not have unconventional.

Appellants’ reliance on *Bascom* is not persuasive. (App. Br. 12.) In *Bascom*, the claims were directed to a specific implementation of “providing Internet-content filtering in a manner that can be customized for the person attempting to access such content while avoiding the need for (potentially millions of) local servers or computers to perform such filtering and while being less susceptible to circumvention by the user.” 827 F.3d at 1348. The Court found “the claims may be read to ‘improve[] an existing technological process.’” 827 F.3d at 1351 (quoting *Alice*, 134 S.Ct. at 2358.) As discussed above, Appellants provide only conclusory, unpersuasive assertions that the subject matter of claim 1 provides any improvements to technology. (App. Br. 15–16.)

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 1. Appellants provide no arguments that would differentiate the

⁶ Although the Examiner withdrew the obviousness rejections based on these references, a novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304; *Genetic Techs. Ltd. v. Meri al L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016).

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remaining claims. Thus, the foregoing analysis of claim 1 is exemplary of that for claims 2–13, 15–18 and 20. *See* 37 C.F.R. § 41.37(c)(1)(iv)(2016). Therefore, we also sustain the Examiner’s 35 U.S.C. § 101 rejection of those claims.

DECISION

The Examiner’s rejection of claims 1–13, 15–18 and 20 under 35 U.S.C. § 101 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