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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FRED MAHAKIAN and NIKHIL PARIKH

Appeal 2017-011249
Application 13/359,611
Technology Center 3600

Before ELENI MANTIS MERCADER, JUSTIN BUSCH, 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, 3, 5–11, 14–16, 19, and 20, which are all of the claims pending in this application.² 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. 2.

² Claims 2, 4, 12, 13, 17, and 18 have been canceled. *See* App. Br. 21–28 (Claims App'x).

INVENTION

Appellants' invention relates to a status management framework in a distributed order orchestration system. Abstract. 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 process status information in a dynamically executable distributed order orchestration system, the processing comprising execution of instructions for:
 - generating a user-interface application for a remote device, the user-interface application being configured to enable a user to define at least one of the instructions of the dynamically executable distributed order orchestration system;
 - receiving from the remote device metadata that includes the user-defined instruction;
 - receiving a source status value from an external fulfillment system, wherein the source status value is associated with a task and a fulfillment line;
 - determining a task instance identity of the task associated with the source status value, and a fulfillment line identity of the fulfillment line associated with the source status value;
 - translating the source status value into a target status value based on a mapping table;
 - storing the target status value, task instance identity, and fulfillment line identity in an intersection table, wherein the intersection section table maps a status value to a task and fulfillment line;
 - analyzing the intersection table and determining one or more target status values mapped to the task;
 - determining a composite status value of the task based on the one or more target status values mapped to the task, wherein the composite status value is a composite of the one or more target status values mapped to the task;
 - analyzing the intersection table and determining one or more target status values mapped to the fulfillment line;
 - evaluating one or more fulfillment line status conditions based on the one or more target status values that are mapped to

the fulfillment line, wherein each fulfillment line status condition comprises a sequence number, a status value, and a condition;

selecting the fulfillment line status condition whose condition evaluates to a predefined value and whose sequence number is the largest;

determining a composite status value of the fulfillment line that is equal to the status value of the selected fulfillment line status condition; and

determining a status value of an orchestration process based on one or more task status values and one or more orchestration process status conditions, wherein each orchestration process status condition evaluates to one of two Boolean values based on the one or more task status values, wherein the execution of additional instructions is determined based on the received metadata.

REJECTION

Claims 1, 3, 5–11, 14–16, 19, and 20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception, without significantly more. Final Act. 10.

ANALYSIS

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: “laws of nature, natural phenomena, and abstract ideas” are not patentable. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (brackets in original) (citing *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)).

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*. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014)

(citing *Mayo*, 566 U.S. at 75–77). 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” (*Diehr*, 450 U.S. at 191); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 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 “[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.”).

However, the Federal Circuit has held claims ineligible as directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (collecting cases). At the same time, “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, and mathematical formulas or relationships. *Alice*, 573 U.S. at 217–21. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 217 (“[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.”).

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.” *Id.* at 221 (quotation marks 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.* (alteration in original) (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 in the Federal Register concerning the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (January 7, 2019) (hereinafter “Revised Guidance”) (<https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf>).

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);³ and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).⁴

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

³ Referred to as “*Revised Step 2A, Prong 1*” in the Guidance (hereinafter “*Step 2A(i)*”).

⁴ Referred to as “*Revised Step 2A, Prong 2*” in the Guidance (hereinafter “*Step 2A(ii)*”).

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.⁵

See Revised Guidance.

Here, applying previous guidance, the Examiner concluded the rejected claims are directed to “reviewing and analyzing data to facilitate task and order fulfillment,” which is an idea of itself and, thus, an abstract idea. Final Act. 10. The Examiner further concluded the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception. *See id.*

Appellants contend the Examiner erred because none of the claims is directed to an abstract idea. App. Br. 6. Rather, according to Appellants, the claims are directed to “a specific application of a distributed order orchestration system that, *inter alia*, manages status information using an intersection table that stores target status values that are mapped to tasks and fulfillment lines, wherein the execution of additional instructions is determined based on a user-defined instruction.” *Id.*

With regard to step two of the *Alice* analysis, Appellants argue the claims “recite functionality that goes well beyond the mere concepts of simply retrieving, comparing and combining data using a computer.” App. Br. 13. Appellants specifically point to the “generating” step of claim 1 as reciting such functionality. *Id.*

⁵ Items (3) and (4) continue to be collectively referred to as “*Step 2B*” of the Supreme Court’s two-step framework, described in *Mayo* and *Alice*.

We are not persuaded that the Examiner erred. Appellants argue claims 1, 3, 5–11, 14–16, 19, and 20 as a group. App. Br. 4–18. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Step 2A(i): Judicial Exception Recited in Claims?

Applying the Revised Guidance, under Step 2A(i), we conclude that claim 1 recites an abstract idea. In particular, the following limitations of claim 1 comprise mental processes that can be performed in a human mind or practically with pen and paper:

determining a task instance identity of the task associated with the source status value, and a fulfillment line identity of the fulfillment line associated with the source status value;

translating the source status value into a target status value based on a mapping table;

storing the target status value, task instance identity, and fulfillment line identity in an intersection table, wherein the intersection section table maps a status value to a task and fulfillment line;

analyzing the intersection table and determining one or more target status values mapped to the task;

determining a composite status value of the task based on the one or more target status values mapped to the task, wherein the composite status value is a composite of the one or more target status values mapped to the task;

analyzing the intersection table and determining one or more target status values mapped to the fulfillment line;

evaluating one or more fulfillment line status conditions based on the one or more target status values that are mapped to the fulfillment line, wherein each fulfillment line status condition comprises a sequence number, a status value, and a condition;

selecting the fulfillment line status condition whose condition evaluates to a predefined value and whose sequence number is the largest;

determining a composite status value of the fulfillment line that is equal to the status value of the selected fulfillment line status condition; and

determining a status value of an orchestration process based on one or more task status values and one or more orchestration process status conditions, wherein each orchestration process status condition evaluates to one of two Boolean values based on the one or more task status values, wherein the execution of additional instructions is determined based on the received metadata.

App. Br. 19–21 (Claims App’x). Independent claims 11 and 16 recite similar limitations, and we also conclude those claims recite mental processes, which amount to an abstract idea.

Mental processes include observation, evaluation, judgment, and opinion. The recited “determining,” “translating,” “analyzing,” and “selecting” steps, shown above, are concepts performed in the human mind as mental processes because the steps mimic human thought processes, perhaps with paper and pencil. *See Bancorp Services, L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1279 (Fed. Cir. 2012), *cert. denied*, 134 S. Ct. 2870 (2014) (“Using a computer to accelerate an ineligible mental process does not make that process patent-eligible.”); *see also* Memorandum n.14 (citing *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”)). Analyzing information by steps people may go through in their minds, without more, is essentially a mental process within the abstract-idea category. The recited “storing” step also mimics human thought processes, with paper and pencil, because the claim requires storing

three items of information in a table. In particular, the claim requires storing the target status value, task instance identity, and fulfillment line identity in an intersection table, wherein the intersection table maps a status value to a task and fulfillment line. Storing this information in a table is a mental process and an abstract idea.

Appellants argue the pending claims are like those in *Enfish* because “improvements to the functioning of the computer are provided.” App. Br. 10 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). Claim 1, however, is not related to the type of patent-eligible database claim considered by the court in *Enfish*. Indeed, all claims on appeal are silent regarding a database. Therefore, none of Appellants’ claims is directed to a “self-referential table for a computer database” of the type considered in *Enfish*. See 822 F.3d at 1336.

Appellants’ argument that “the present claims are allowable over the prior art, so there is no evidence that the claimed process was previously used either manually, or using a computer” is also unpersuasive. It is not enough for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art, passing muster under 35 U.S.C. §§ 102 and 103. See *Mayo*, 566 U.S. at 89–90; *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a new abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty.”); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016) (same for obviousness).

For these reasons, we conclude representative claim 1, and grouped claims 3, 5–11, 14–16, 19, and 20, recite judicial exceptions.

Step 2A(ii): Judicial Exception Integrated into a Practical Application?

If the claims recite a patent-ineligible concept, as we conclude above, we proceed to the “practical application” Step 2A(ii) in which 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.

Here, the additional elements of claim 1 are:

non-transitory computer-readable medium having instructions stored thereon that, when executed by a processor, cause the processor to process status information in a dynamically executable distributed order orchestration system, generating a user-interface application for a remote device, the user-interface application being configured to enable a user to define at least one of the instructions of the dynamically executable distributed order orchestration system; receiving from the remote device metadata that includes the user-defined instruction; receiving a source status value from an external fulfillment system, wherein the source status value is associated with a task and a fulfillment line;

None of the additional elements integrates the abstract idea into a practical idea. The two “receiving” steps amount to no more than data gathering and do not impose meaningful limitations on the claim. *See* MPEP 2106.05(g). Receiving information such as metadata and status values is well-known, only tangentially related to the invention, and does not meaningfully limit the “determining,” “translating,” “storing,” “analyzing,” and “selecting” steps of the abstract idea. Indeed, the “receiving” of data is merely insignificant extra-solution activity in the form of data gathering.

See Bilski v. Kappos, 545 F.3d 943, 963 (Fed. Cir. 2008) (en banc), *aff'd sub nom Bilski v. Kappos*, 561 U.S. 593 (2010) (characterizing data gathering steps as insignificant extra-solution activity).

The “non-transitory computer-readable medium,” “processor,” and “system” recited in the preamble are generic computer components that do not meaningfully limit the abstract idea. These elements merely recite using a computer as a tool to perform an abstract idea. *See* MPEP 2106.05(f); *see also* Spec. ¶ 114 (“Processor 914 may be any type of general or specific purpose processor.”), ¶ 115 (“A computer-readable medium may be any available medium that can be accessed by processor 914.”), ¶ 1 (“a computer system for managing an orchestration of business processes.”).

Appellants argue that the recited “generating” step provides an inventive concept. App. Br. 13. We disagree. We give claim 1 its broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Although claim 1 recites “generating a user-interface application for a remote device,” there is no description in the Specification that supports the plain and ordinary meaning of this limitation.⁶ Specifically, nowhere does the Specification describe generating a user interface application. In the Summary of Claimed Subject Matter section of the Appeal Brief, Appellants identify no written description in the Specification to support this limitation, and we find none. Neither the term “generating” nor its plain and ordinary meaning is used in the Specification, which describes displaying or using a user interface. *See, e.g.*, Spec.

⁶ In the event of further prosecution, we leave it to the Examiner to determine whether the “generating” step of claim 1, and similar limitations in claims 11 and 16, are adequately supported by written description, as required by 35 U.S.C. § 112, first paragraph.

¶¶ 164–65. The Specification describes several user interfaces (user interfaces 1200, 1300, and 1700), which allow the presentation and entry of different types of information. *See* Spec. ¶¶ 160, 163, and 173. The plain and ordinary meaning of “application” also is inconsistent with the Specification, as the Specification refers only to a “user interface,” not to a “user interface application.” The Specification does not define or otherwise suggest to an artisan of ordinary skill what a “user interface application” might be. Thus, we broadly but reasonably construe “generating a user-interface application for a remote device,” to mean “displaying a user interface for a remote device” in light of the Specification. *See* Spec. ¶¶ 160–175; Figs. 12–17.

Read in this light, the “generating” step amounts to insignificant extra-solution activity. Adding an initial step of displaying a user interface does not add a meaningful limitation to the processing of information, as recited in the steps comprising the abstract idea. The output of information also is merely insignificant extra-solution activity.

Appellants’ reliance on *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (2014), is misplaced, as the recited claims do not improve the computer. App. Br. 16. In *DDR*, the claims at issue involved, *inter alia*, “web pages displays [with] at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants” (claim 1 of US 7,818,399). The Federal Circuit found the claims in *DDR* to be patent-eligible because “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR*, 773 F.3d at 1257. Specifically, the Federal Circuit found the claims addressed the

“challenge of retaining control over the attention of the customer in the context of the Internet.” *Id.* at 1258. We find the rejected claims are dissimilar to *DDR*’s web page with an active link, and the Specification does not support the view that the computer related claim elements are unconventional. *See Spec.* ¶¶ 1, 14, and 15.

Appellants’ preemption argument is also not persuasive. *See App. Br.* 17. 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. *See Ans.* 12. 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., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[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.”).

Because we determine the mental processes recited in claim 1 are not integrated into a practical application, we conclude claim 1, and grouped claims 3, 5–11, 14–16, 19, and 20, are directed to an abstract idea.

Step 2B: Inventive Concept?

Evaluating representative claim 1 under step 2B of the *Alice* analysis, we conclude that the claim lacks an inventive concept that transforms the abstract mental processes into a patent-eligible application of that abstract idea.

The recited “receiving” and “generating” limitations are well-understood, routine, and conventional (“WURC”) because receiving or transmitting data over a network is WURC when claimed as extra-solution activity (see above). *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). Moreover, the Specification indicates that the “non-transitory computer-readable medium,” “processor,” and “system” recited in the preamble are sufficiently well-known that the Specification does not need to describe the particulars of such additional element to satisfy 35 U.S.C. § 112(a). *See Berkheimer* Memo § III.A.1; Spec. ¶¶ 1, 114, and 115. Because the Specification describes these additional elements in general terms, without describing the particulars, we conclude the claim limitations may be broadly but reasonably construed as reciting WURC computer components and techniques.

Appellants argue that the claims contain an inventive concept because “[n]o prior art is presented that alleges to anticipate or make obvious of any of the pending claims.” App. Br. 14–15 (citing *Bascom Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)).

We are not persuaded by Appellants’ argument. The claims in *Bascom* recited a “specific method of filtering Internet content” requiring “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *Bascom*, 827 F.3d at 1345–46, 1350. The Federal Circuit reasoned that the claims covered “a technology-based solution . . . to filter content on the

Internet that overcomes existing problems with other Internet filtering systems” and “improve[s] an existing technological process.” *Id.* at 1351 (citing *Alice*, 134 S. Ct. at 2358); *see Alice*, 134 S. Ct. at 2358 (explaining that “the claims in *Diehr* were patent eligible because they improved an existing technological process”).

In contrast to *Bascom*, and as discussed above, the claims here do not cover a technology-based solution that improves an existing technological process. *See* Ans. 12. Among other things, they do not require any uncommon computer arrangements or any unconventional network configurations.

Thus, with respect to the Step 2B analysis, we conclude, similar to *Alice*, the recitation of the additional limitations discussed above is simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention. *See Alice*, 573 U.S. at 221 (“[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.”). We conclude the claims fail Step 2B because claim 1, in essence, recites various computer-based elements along with no more than mere instructions to implement the identified abstract idea using the computer-based elements.

Accordingly, because the claims are directed to an abstract idea, without significantly more, we sustain the Examiner’s § 101 rejection of independent claim 1. We also sustain the Examiner’s § 101 rejection of grouped independent claims 11 and 16, and grouped dependent claims 3, 5–10, 14, 15, 19, and 20.

Appeal 2017-011249
Application 13/359,611

DECISION

We affirm the decision of the Examiner rejecting claims 1, 3, 5–11, 14–16, 19, and 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