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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUAN HUERTA, YULIN NING,
and LEANDRO DALLE MULE

Appeal 2017-011303
Application 14/138,194
Technology Center 3600

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and ADAM J. PYONIN, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 and 5–27, which constitute all the pending claims in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify Citibank, N.A. as the real party in interest (App. Br. 3).

THE INVENTION

Appellants' claimed invention is directed to "assessing behavior, such as fraud and risk, in financial entities and transactions," in which a "behavior score [is] generated for each entity" (Abstract).

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

> 1. A method for assessing financial institution branch behavior, comprising:
>
> receiving, using a processing engine computer having a processor coupled to memory, data related to a plurality of branches of a financial institution;
>
> segmenting, using the processing engine computer, the plurality of branches into a plurality of branch peer groups based at least in part on a plurality of branch operational risk behavior components consisting at least in part of observed branch losses identified for each branch of the financial institution in the received data;
>
> normalizing, using the processing engine computer, each of the branch operational risk behavior components for each of the branch peer groups; and
>
> generating, using the processing engine computer, a branch operational risk behavior score for each branch of the financial institution based on a comparison of operational risk behavior values of each branch of the financial institution to a branch operational risk behavior norm for the branch peer group into which the branch is segmented.

REJECTION

The Examiner made the following rejection:

Claims 1 and 5–27 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Ans. 2, Final Act. 11.[2]

ISSUE

The pivotal issue is whether the Examiner erred in finding the claimed invention is directed to a judicial exception without significantly more.

ANALYSIS

Appellants argue that none of the cases cited by the Examiner as illustrations of judicial exceptions to statutory subject matter are "remotely related or analogous to Applicants' claimed invention" (Reply Br. 2; *see* Reply 2–5) and "the Examiner's references to such unrelated historic examples is no substitute for a specific, plausible analysis regarding how or why the specific claim language supports the Examiner's conclusion that the claims are directed to the alleged 'abstract idea'" (Reply Br. 5). Appellants contend "[t]he Examiner's reasoning . . . demonstrates conclusively that the Examiner deems all software and computer-implemented inventions to be *per se* patent-ineligible 'abstract ideas'" (Reply Br. 7). Appellants further contend that "the claimed invention provides a modeling process that employs many different programming languages, multiple processing platforms, and a series of advanced analytic techniques" (Reply Br. 8).

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[2] The Examiner introduced new grounds for the rejection under 35 U.S.C. § 101 that was made in the Final Action. *See* Ans. 2, 5.

We do not agree with Appellants' arguments. 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." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). 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.* (citing *Mayo*, 566 U.S. at 77–78). If the claims are directed to a patent-ineligible concept, the second step in the 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." *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). 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.'" *Id.* (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea "'cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or adding 'insignificant post-solution activity.'" *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

With respect to *Alice* step one, "[t]he 'abstract idea' step of the inquiry calls upon us to look at the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Texas, LLC v. DirectTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v.*

Alstom S.A., 830 F.3d 1350, 1353 (Fed. Cir. 2016)); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) ("[T]he 'directed to' inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether 'their character as a whole is directed to excluded subject matter.'" (Citation omitted.)).

Here, the Examiner first finds the claims are "directed to assessing financial institution branch behavior, specifically risk and fraud, which is an abstract idea" (Ans. 2–3). We do not find the Examiner's characterization of the claims as directed to "assessing financial institution branch behavior"—language taken from the preamble of claim 1—to be in error, when compared to Appellants' disclosure as a whole. For example, Appellants characterize the present invention as providing "quantitative assessment of behavior, such as fraud and risk, in financial entities and transactions" (Spec. ¶ 1).

We also agree with the Examiner's comparisons between the individual claim steps and claims identified by our reviewing court as being directed to an abstract idea. Particularly, we find the claimed "receiving," "segmenting," "normalizing," and "generating" steps as akin to the claims at issue in:

1. *Elec. Power Grp.*, 830 F.3d at 1353 (claims directed to "collecting information, analyzing it, and displaying certain results of the collection and analysis"); and
2. *Digitech Image Technologies, LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) ("Without additional limitations, a process that employs mathematical algorithms to

manipulate existing information to generate additional information is not patent eligible."),

The claim steps, when considered in light of the disclosure, describe the mathematical concepts used to turn "data related to a plurality of branches of a financial institution" into a set of "branch operational risk behavior score[s]," and are indistinguishable from the methods found abstract by our reviewing court and described above.

With respect to *Alice* step two, the Examiner finds, and we agree, that "[t]he claim(s) do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the processing engine computer having a processor coupled to memory is a generic computer with generic computer components performing the abstract idea (Ans. 3 (alteration in original) and "[a]pplying an abstract idea to a particular technological environment does not amount to significantly more" (Ans. 4). The technical improvements cited by Appellants as performed by the "claimed invention" (Reply Br. 8, citing Spec. ¶¶ 33, 32, 37, 40, 43) describe features not appearing in the claimed invention, and are themselves described by Appellants in the language of mathematical techniques, such as "a series of advanced analytic techniques" and "advanced outlier analytics" (Reply Br. 8).

Similarly, Appellants' argument that "the claimed invention solves problems that specifically arise in the realm of computing" (Reply Br. 8, citing Spec. ¶¶ 2–3) corresponding to technical advantages related to "adjust[ing] and adapt[ing] dynamically changing data sets" and providing scalability "to handle arbitrarily large sets of data and information" (Reply Br. 8) is not persuasive, as these purported advantages are again tied to the

abstract method, and are, in Appellants' words, "an abstract-idea-based solution implemented with generic technical components in a conventional way" (Reply Br. 10).

Accordingly, we affirm the Examiner's rejection of independent claim 1, and independent claims 24–27 commensurate in scope, and affirm for the same reasons the rejection of claims 5–23.

CONCLUSION

The Examiner did not err in finding the claimed invention is directed to a judicial exception without significantly more.

DECISION

The Examiner's decision rejecting claims 1 and 5–27 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED