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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN JOSEPH MARTINEK, WARREN RICHARD KOCH,
JAMES ARTHUR HAMMOND, and
GEORGE E. ANDERSON

Appeal 2017-011304
Application 11/762,925
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants¹ seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–7, 9–14, and 21–27. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ According to Appellants, the real party in interest is The Boeing Company of Chicago, Illinois. *See* App. Br. 2.

THE INVENTION

Appellants' claim 1 is directed to an improved data processing system and in particular, to an inventory management systems. Still more particularly, the invention is directed to a computer implemented method, apparatus, and computer usable program code for an inventory inspection and supplier quality management system. (Spec. ¶ 1.)

Claim 1 is representative of the subject matter on appeal.

1. A method for managing inspection of items, the method comprising:

receiving at an inventory management system an identifier for an item in a shipment of items to form item received data;

outputting, by a processor unit, inspection criteria for the item;

retrieving a quality history for the item from an inventory management database, wherein the quality history is data regarding result of inspections of a similar item received;

automatically adjusting, by the processor unit, inspection criteria for inspecting the shipment of items using the quality history to form adjusted inspection criteria, wherein the adjusted inspection criteria include an inspection level and an inspection sample size, wherein the inspection level includes at least one of skip inspection, normal inspection, and tightened inspection;

inspecting the item using the adjusted inspection criteria, wherein an inspection result is formed;

receiving the inspection result at the processor; and

updating, by the processor unit, the quality history for the received item using the inspection result.

THE REJECTION

Claims 1–7, 9–14, and 21–27 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

We will sustain the rejection of claims 1–7, 9–14, and 21–27 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, . . . then ask, “[w]hat else is there in the claims before us?” . . . To answer that question, . . . 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. . . . [The Court] 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.”

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, 72–73 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet*

Patents Corp. v. Active Network, Inc., 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the judicial exception is integrated into a practical application. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 50–57 (PTO-P-2018-0053) (Jan. 7, 2019) (“*Subject Matter Eligibility Guidance*”).

The Examiner determines that the claims are directed to comparing new and stored information within a database, and using rules to identify options that can be performed mentally and is, therefore, directed to an abstract idea (Final Act. 5; Ans. 4). The Examiner finds that the claims do not include additional elements that are sufficient to amount to significantly more than the underlying abstract idea. (Final Act. 5.)

We agree with the Examiner that the steps of receiving an identifier, outputting criteria, retrieving history, adjusting criteria, receiving results, and updating history constitute analyzing information by steps people go through in their minds. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). Merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. *See, e.g., Content Extraction*, 776 F.3d at 1347; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014).

Turning to the second prong of the “directed to test,” claim 1 merely requires a “processor unit” and a “database.” The recitation of the words “processor unit” and “database” do not impose “a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *Subject Matter Eligibility Guidance* at 54. In this regard, there is no recitation of an improvement in the functioning of the processor unit or database or other technology, and no recitation of a particular machine or manufacture that is integral to the claims, and no recitation of a transformation of a particular article to a different state or thing. *Id.* In this regard, the claim does not recite the processor unit or the database in any specific technical terms which would relate to an improvement in the processor or the database.

We determine that the recitation of “inspecting the item using the adjusted inspection criteria” is a recitation of post solution activity. The Specification at paragraph 4 discloses that it is conventional to inspect ordered items to ensure that the item conforms to the buyer’s specification or requirements for the item. 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) (internal citation and quotation marks omitted). The Court in *Alice* noted that “[s]imply appending conventional steps, specified at a high level of generality,’ was not ‘enough’ [in *Mayo*] to supply an ‘inventive concept.’” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 566 U.S. at 82–83, 77–78, 72–73). *See also Parker v. Flook*, 437 U.S. 584, 590 (1978) (“The notion that post-solution activity, no matter how conventional or obvious in itself, can transform an

unpatentable principle into a patentable process exalts form over substance.”).

Therefore, we agree with the Examiner that claim 1 is directed to an “abstract idea.”

We are not persuaded of error on the part of the Examiner by Appellants’ argument that the claims do not recite an application of a mathematical algorithm or apply well known natural laws because the Examiner does not rely on a determination that the claim is so directed. Rather, the Examiner determines that the claims are directed to a method that can be performed in the human mind. (App. Br. 14.)

We are not persuaded of error on the part of the Examiner by Appellants’ argument that the claims do not preempt all methods of inspecting items. (App. Br. 14.) While 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); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701, 193 (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.”). And, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379.

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to an abstract idea, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an

element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The introduction of a processor unit and a database into the claims does not alter the analysis at *Alice* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 134 S. Ct. at 2358 (alterations in original) (internal citations omitted).

Instead, “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 2359. They do not.

Taking the claim elements separately, the function performed by the processor unit at each step of the process is purely conventional. Using a

computer to receive identifier data, output inspection criteria data, retrieve quality history data, process the inspection criteria data, receive inspection data and update quality history data amounts to electronic data retrieval and analysis—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the trading industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am. Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellants’ claims add nothing that is not already present when the steps are considered separately.

As we stated above, the claims do not, for example, purport to improve the functioning of the computer itself and the claims do not affect an improvement in any other technology or technical field. Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea of information access using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

We are also not persuaded of error on the part of the Examiner by Appellants' argument that the claims are directed to a novel and non-obvious solution to a specific problem. (App. Br. 14.) To the extent Appellants maintain that the limitations of claim 1 necessarily amount to "significantly more" than an abstract idea because the claimed apparatus is allegedly patentable over the prior art, Appellants misapprehend the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an "inventive concept," the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for "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 (internal citation omitted). A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Appellants maintain that the claims are analogous to the claims the Court upheld as patent-eligible in *Diehr* because the claims recite "inspecting the item." (Reply at 9). But we fail to see how, and Appellants do not adequately explain how, the claims in *Diehr*, which were directed to an industrial process, i.e., an improved process for curing synthetic rubber, that "significantly lessens the possibility of 'overcuring' or 'undercuring'" (*see Diamond v. Diehr*, 450 U.S. 175, 187 (1981)), relate to the claims at issue here. As we stated above, in our view, the step of inspecting the item is post solution activity. *See Diehr*, 450 U.S. at 191-92 ("insignificant post-solution activity will not transform an unpatentable principle into a patentable process.").

In view of the foregoing, we will affirm the Examiner's rejection of claim 1. We will also sustain this rejection as it is directed to claims 2–7 and 9–14 because the Appellants have not argued the separate eligibility of these claims. We will also sustain the rejection as it is directed to claims 21–27 because the Appellants make the same arguments related to the patent eligibility of these claims as was made in regard to the patent eligibility of claim 1.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–7, 9–14, and 21–27 under 35 U.S.C. § 101.

DECISION

The decision of the Examiner 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