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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/856,520	04/04/2013	Thomas Fleury	TH-12-0594-US1	4834

102469 7590 07/02/2018

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ART UNIT	PAPER NUMBER
2441	

NOTIFICATION DATE	DELIVERY MODE
07/02/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS FLEURY and FLAVIEN DELORME

Appeal 2018-000152
Application 13/856,520[1]
Technology Center 2400

Before MICHAEL J. STRAUSS, JOSEPH P. LENTIVECH, and MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–4, 6–14, and 16–22, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Technology

The application relates to "establishing and managing communications where a host device uses a modem." Spec. ¶ 1.

Illustrative Claim

Claim 1 is illustrative and reproduced below with a dispositive limitation at issue emphasized:

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[1] Appellants state the real party in interest is NVIDIA Corp. App. Br. 3.

1. A host device, comprising:

a modem interface arranged to transmit transmission units between the host device and a modem;

a communication event control function configured to generate control primitives to establish a communication event between the host device and a remote device, wherein the communication event control function operates at a protocol layer in *a relocatable protocol stack* located in either the host device or the modem;

a client agent connected to receive the control primitives from the communication event control function and operable to convert the control primitives to data transmission units; and

a host routing interface operable to route data transmission units from the client agent according to a predetermined route option which is set based on whether the relocatable protocol stack of the communication function for processing the data transmission units is located on the host device or the modem.

Rejections

Claims 1–4, 6–14 and 16–22 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 4.

Claims 1–4, 8, and 21 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett et al. (US 2006/0155814 A1; July 13, 2006), Low et al. (US 2011/0069635 A1; Mar. 24, 2011), and Bae et al. (US 2013/0332503 A1; Dec. 12, 2013). Final Act. 8.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett, Low, Bae, and Johnson et al. (US 2007/0044002 A1; Feb. 22, 2007). Final Act. 14.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett, Low, Bae, and Brenton et al. (US 7,640,581 B1; Dec. 29, 2009). Final Act. 16.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett, Low, Bae, and Fa et al. (US 2009/0006703 A1; Jan. 1, 2009). Final Act. 17.

Claims 12, 16, and 22 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett, Low, and Monroe et al. (US 2004/0042450 A1; Mar. 4, 2004). Final Act. 19.

Claims 13 and 14 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett, Low, Monroe, and Zhao (US 2012/0317263 A1; Dec. 13, 2012). Final Act. 23.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett and Low. Final Act. 25.

Claim 19 stands rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett, Low, and Brenton. Final Act. 30.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as obvious over the combination of Bennett, Low, and Fa. Final Act. 31.

ISSUES

1. Did the Examiner err in concluding claim 1 was directed to ineligible subject matter under § 101?

2. Did the Examiner err in finding Low teaches or suggests "a relocatable protocol stack," as recited in claim 1?

ANALYSIS

§ 101

Section 101 defines patentable subject matter, but the Supreme Court has "long held that this provision contains an important implicit exception" that "[l]aws of nature, natural phenomena, and abstract ideas are not

patentable." *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (quotation omitted). To determine patentable subject matter, the Supreme Court has set forth a two-part test. "First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts" of "laws of nature, natural phenomena, and abstract ideas." *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). Second, 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*, 566 U.S. at 79, 78).

Here, the Examiner concludes that "[c]laim 1 is directed toward a method claim" and "[t]he inventive concept is a method for analyzing, updating information from an alternate node based on the failure of local node." Final Act. 4 (emphasis omitted); *see also* Ans. 3. Yet we agree with Appellants that the Examiner has not explained how this relates to the actual claim language. Claim 1 recites a host device, not a method, and "[t]here is no recitation in Claim 1 of an alternate or local node." App. Br. 7 (emphasis omitted).

The Examiner also states "[t]he claim(s) invention is/are directed to" and then proceeds to recite the entirety of claim 1. Final Act. 4; Ans. 3. But the Examiner fails to explain *why* the entirety of the claim is directed to an abstract idea. Merely calling the claim abstract without explaining why is insufficient.

Finally, the Examiner concludes:

> Several cases have found concepts relating to processes of comparing data that can be performed mentally abstract, such as comparing information regarding a sample or test subject to a

> control or target data **(Ambry, Myriad CAFC)**, collecting and comparing known information **(Classen)**, comparing data to determine a risk level **(Perkin-Elmer)**, diagnosing an abnormal condition by performing clinical tests and thinking about the results **(In re Grams)**, obtaining and comparing intangible data **(Cybersource)**, and comparing new and stored information and using rules to identify options **(SmartGene)**.

Final Act. 5–6; Ans. 4. Yet we agree with Appellants that the Examiner "does not explain *why* the alleged abstract idea corresponds to *SmartGene*" or the other cited cases regarding *mental* processes. App. Br. 8. At best, claim 1 is directed to "rout[ing] data transmission units . . . according to a predetermined route option . . . based on [where] the relocatable protocol stack . . . is located," but the Examiner fails to explain how this relates to a *mental* process. *See* App. Br. 8–9.

Accordingly, given the record before us, we do not sustain the Examiner's rejection of claims 1–4, 6–14, and 16–22 under § 101.

§ 103

Independent claims 1, 12, and 17 recite "a *relocatable* protocol stack."

The Examiner finds "Low discloses . . . a set of IMS data stacks 126 (relocatable protocol stack)." Ans. 9–10 (emphasis omitted). Appellants argue "there is no teaching in the cited portions of Low that its IMS data stacks 126 are *relocatable*." App. Br. 11. The Examiner responds that "the features upon which applicant relies (i.e., relocating relocatable protocol stack between the host or modem) are not recited in the rejected claim(s)." Ans. 8 (emphasis omitted). Appellants explain that they "did not argue that the claimed relocatable protocol stack was 'relocated' between the claimed host or modem" but instead were merely arguing that "the claimed protocol stack was a 'relocatable' protocol stack." Reply Br. 3.

We agree with Appellants that claim 1 recites "a *relocatable* protocol stack." The Examiner has not explained how Low's set of IMS data stacks 126 is "relocatable," as required by claim 1. *See* Ans. 9–10; Final Act. 9–10.

Accordingly, we do not sustain the Examiner's rejections under § 103 of independent claims 1, 12, and 17, and their dependent claims 2–4, 6–11, 13, 14, 16, and 18–22.

DECISION

For the reasons above, we reverse the Examiner's decision rejecting claims 1–4, 6–14, and 16–22.

REVERSED