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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PATRICK J. ALLIN, CHARLES C. CHERRY, WILLIAM H. EICHHORN, HOWARD L. NIDEN, RICHARD P. PEDERSEN, and MATTHEW R. BAGLEY

Appeal 2018-000270
Application 14/321,255
Technology Center 3600

Before MURRIEL E. CRAWFORD, PHILIP J. HOFFMANN, and KENNETH G. SCHOPFER, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–10 and 13–19. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a construction payment management system. (Spec. ¶ 8; Title).

Claim 1 is representative of the subject matter on appeal.

1. A construction payment management system comprising:

an application server including a processor and a computer readable memory storing instructions that, when executed by the processor, cause the application server to:

access project data stored on the computer-readable memory for a first construction project of a plurality of construction projects managed by the construction payment management system,

establish, based on the accessed project data, electronic communication over a network with a first device operated by a first participant included in the first construction project, a second device operated by a second participant included in the first construction project, and a third device operated by a third participant included in the first construction project,

generate a first user interface and transmit the first user interface to the first device over the network, the first user interface including a first input mechanism for receiving a first amount, a second input mechanism for receiving an identifier of the second participant associated with the first amount, and a third input mechanism for receiving a second amount,

store the first amount, the identifier of the second participant associated with the first amount, and the second amount to the computer-readable memory,

generate a second user interface and transmit the second user interface to the second device over the network, the second user interface displaying the first amount,

electronically generate a first request on behalf of the second participant based on the first amount,

in response to the first request being generated, generate a third user interface and transmit the third user interface to the first device over the network, the third user interface displaying the first request and including a fourth input mechanism receiving an approval of the first request,

in response to receiving the approval of the first request through the fourth input mechanism, automatically generate a second request on behalf of the first participant based on the first request and the second amount,

in response to the second request being generated, generate a fourth user interface and transmit the fourth user interface to the third device over the network, the fourth user interface displaying the second request and including a fifth input mechanism receiving approval of the second request,

in response to receiving the approval of the second request through the fifth input mechanism, automatically initiate a first electronic transfer from the third participant to the first participant based on the second request and automatically initiate a second electronic transfer from the third participant to the second participant based on the first request, and

automatically update the project data stored on the computer-readable memory based on the first electronic transfer and the second electronic transfer.

THE REJECTION

Claims 1–10 and 13–19 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1–10 and 13–19 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, 573 U.S. 208, 217–218 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)) (citations omitted).

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., 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 itself 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, pp 50–57 (Jan. 7, 2019) (“*Guidance*”).

The Examiner determines that the claims are directed to payment initiation and completion. The Examiner determines that payment initiation and completion is a fundamental economic practice. (Final Act. 5). The Examiner determines specifically that it is a concept relating to the economy and commerce such as agreements between people in the form of contracts, legal obligations, and business relations. The Examiner uses the term “fundamental” in the sense of being foundational or basic and not in the sense of necessarily being “old” or “well-known.” The Examiner finds that the claims are directed to additional elements, including a network and a processor. The Examiner finds that the claimed generated user interfaces in light of Specification can be interpreted to be webpages. The Examiner further finds that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the recited network and processor do not add meaningful limitations to the abstract idea and would be routine in a computer implementation. Further, the Examiner finds that the computer elements are all recited with a high level of generality and that there is no indication that the combination

of elements improves that functioning of the computer or improves any other technology. (*id* at 6).

The disclosure in the Specification supports the Examiner's determination that the claims recite payment initiation and completion. In this regard, the Specification discloses at paragraph 9 that in one embodiment of the invention, a construction payment management system including an application server is provided. When the instructions are executed by the processor, the application server electronically generates a first request for payment on behalf of a first participant in a construction project in response to information received from the first participant. The first request is transmitted to a second participant and a second request for payment is electronically generated on behalf of the second participant based at least in part on the first request for payment. The second request is transmitted to a payment source and the first payment is initiated from the payment source to the first participant based on the first request for payment.

The recitations of claim 1, for example, also support the determination that the claims recite payment initiation and completion. For example, claim 1 recites, in relevant part with emphasis added: “a construction *payment* management system comprising,” “an application server including a processor and a computer readable memory storing instructions that, when executed by the processor, cause the application server to: access project data. . . for a first construction project,” “generate a first user interface . . . the first user interface including a first input mechanism for receiving a first *amount*, a second input mechanism for receiving an identifier of the second participant associated with the first *amount*,” “a third input mechanism for receiving a second *amount*,” “store the first *amount*,” “in response to

receiving the approval of the second request . . . automatically *initiate a first electronic transfer,*” and “automatically *initiate a second electronic transfer.*” All of these recitations relate to payment initiation and completion.

We thus agree with the Examiner’s findings that claim 1, for example recites payment initiation and completion. We also agree that payment initiation and completion relates to a commercial interaction and thus is a fundamental economic practice. *Guidance* 84 Fed. Reg. 52.

Turning to the second prong of the “directed to test”, we agree with the Examiner that the additional elements recited include a network and a processor. The recitation of a “processor and a network” does 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.” *Guidance* 84 Fed. Reg. at 53. We find no indication in the Specification, nor do Appellants direct us to any indication, that the operations recited in independent claim 1 invoke any inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”). In fact, the Specification discloses that the invention can be implemented using existing hardware or hardware that could be created by those of ordinary skill in the art. The processor can be a microprocessor, a programmable logic control, an application specific integrated circuit, or

computing device configured to fetch and execute instructions. The Specification also discloses that no specific network configuration is implied and may be the Internet, a telephone system, wireless networks, satellite networks, cable TV networks and various other private or public networks. (Spec. ¶ 324).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes any improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the revised Guidance. *See Guidance*, 84 Fed. Reg. at 55.

We therefore determine that claim 1 is directed to an abstract idea.

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*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

The introduction of a processor and network 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, 573 U.S. at 223 (alterations in original) (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 225. In this case, they do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—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).

As we discussed above, there is no improvement of the network disclosed or claimed.

Considered as an ordered combination, the computer components of claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-access/display is equally generic and conventional or has otherwise been held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Claim 1 does not, for example, purport to improve the functioning of the computer itself or any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information

access under different scenarios. (*See, e.g.*, Spec. ¶ 324). Thus, claim 1 amounts 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*, 573 U.S. at 226.

We have reviewed all the arguments (Appeal Br. 9–17; Reply Br. 3–6) Appellants have submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

We are not persuaded of error on the part of the Examiner by Appellants' argument that claim 1 includes recitations that are neither abstract nor involve the economy. Specifically, Appellants direct our attention to the recitations related to establishing electronic communications between multiple devices, generating various interfaces with different input mechanisms having different functions, controlling actions between devices based on input received and controlling communications between the remote devices. (Appeal Br. 10). In this particular case, the broadly claimed steps focus on the result rather than the technical details of its implementation and are generic and conventional and are similar to language otherwise held to be abstract (*see Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation,

display, and transmission was directed to an abstract idea); *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring was directed to an abstract idea)). We thus conclude claim 1 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited abstract idea. These recitations relate to generic operations of the processor and network.

We are not persuaded of error on the part of the Examiner by Appellants' argument that the claims recite an improvement to the technological process. (Appeal Br. 10). Specifically, Appellants direct our attention to existing processes that use data entry, facsimile transmission and phone calls. Appellants argue that the steps of claim 1 are not routine and conventional in terms of performing the abstract idea of payment initiation (*Id.* at 16). Appellants' argument does not apprise us of error because Appellants conflate the conventionality of the steps being performed by a processor and the conventionality of the computer functions required to implement the steps. In other words, even though the claims perform steps by a processor which were previously performed by other means, the claims do not include an improvement to the processor itself.

In addition, the steps performed by the processor of accessing data, establishing electronic communication over a network, generating various interfaces, storing data, analyzing data are well-understood, routine and conventional processor operations, are disclosed as being steps that can be performed by various unimproved processors. (Spec. ¶ 324).

We are lastly not persuaded of error on the part of the Examiner by Appellants' argument that claim 1 does not preempt all ways of the alleged

abstract idea of “payment initiation and completion.” (Appeal Br. 17). “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.

In view of the foregoing, we will sustain this rejection as it is directed to claim 1. We will also sustain this rejection as it is directed to the remaining claims because the Appellants have not argued the separate eligibility of these claims.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–10 and 13–19 under 35 U.S.C. § 101.

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DECISION

The decision of the Examiner to reject claims 1–10 and 13–19 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