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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT ROGUT, KATERYNA LYASHCHENKO, and
TOMASZ KRZEPKOWSKI

Appeal 2018-000570
Application 13/689,016¹
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL C. ASTORINO, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–6 and 8–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Lean Supply Solutions Inc. (Appeal Br. 3.)

CLAIMED SUBJECT MATTER

Appellants' "invention relates generally to data collection, and more particularly to a system and method for supply chain data management."

(Spec. ¶ 1.)

Claims 1 and 19 are the independent claims on appeal. Claim 1 is illustrative. It recites:

1. A method of collecting supply chain information for one or more items on a handheld computing device comprising:

receiving, via at least one input device, a selection of a task, said task including subtasks linked by a workflow specific to one or both of a type of and a customer of the one or more items, said task being configured to process said one or more items according to a supply-chain process, said subtasks being configured to collect data about said one or more items, said data including at least identifying information and quantity of said one or more items undergoing the supply-chain process;

rendering, in a graphical-user interface at an output device of said handheld computing device, a first set of subtasks to perform based on said workflow, said rendering at said graphical-user interface including outputting information for an operator of said handheld computing device describing a specific element of said data to be collected and including a symbolic or textual indication of a type of a data-collection device to be used to collect said specific element of said data, said data collection device being separate from said handheld computing device;

receiving, via at least said data-collection device, data-collection input for each subtask of said first set of subtasks, the data-collection input including identifying information and quantity of said one or more items;

determining, by a processor, from said data-collection input if said first set of subtasks is performed; and

if said first set of subtasks is determined to be performed, rendering, in said graphical user interface at said output device of said handheld computing device, a second set of subtasks to perform based on said workflow.

REJECTIONS

Claims 1–6 and 8–20 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–6 and 8–20 are rejected under 35 U.S.C. § 103(a) in view of Sholl (US 2011/0035326 A1, pub. Feb. 10, 2011) and Official Notice.

ANALYSIS

The § 101 rejection

“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. Section 101, however, “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Alice applies a two-step framework, earlier set out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* If the claims are determined to be directed to a patent-ineligible concept, then the second step of the framework is applied to determine if “the elements of the

claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, we apply a “directed to” two prong test to: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

Here, the Examiner determines that “[t]he claims are directed to the abstract ideas of . . . collecting and comparing known information . . . ; comparing new and stored information and using rules to identify options . . . ; using categories to organize, store and transmit information . . . ; organizing human activity.” (Final Action 5.)

Appellants disagree and argue

that claim 1 is focused on and directed to improving computer functionality itself and is not directed to an economic or other task for which a computer is used in an ordinary capacity. Claim 1 is directed to a specific improvement to the way a computer system functions to retrieve data related to supply chain information more efficiently and accurately.

(Appeal Br. 10.)

Under step one of the *Alice* framework, we “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. DIRECTV, 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)).

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon Rather, the “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.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant technology] or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* 2019 Guidance at 54–55.

The Specification provides evidence as to what the claimed invention is directed. In this case, the Specification discloses that the “invention relates generally to data collection, and more particularly to a system and method for supply chain data management.” (Spec. ¶ 1.) Claim 1 provides further evidence. Claim 1 recites “[a] method of collecting supply chain information . . . comprising: receiving . . . a selection of a task, said task including subtasks linked by a workflow,” “rendering . . . a first set of subtasks to perform based on said workflow,” “receiving . . . data-collection input for each subtask,” “determining . . . if said first set of subtasks is performed,” “and if said first set of subtasks is determined to be performed, rendering . . . a second set of subtasks to perform based on said workflow.” In short, claim 1 is directed to the abstract idea of organizing human activity,

i.e., “managing personal behavior or relationships” and “following rules or instructions.” (See 2019 Guidance at 52.) This is accomplished by receiving information, analyzing information and displaying results, receiving additional information, analyzing the additional information and displaying results.

Although we and the Examiner describe, at different levels of abstraction, to what the claims are directed, it is recognized that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). That need not and, in this case does not, “impact the patentability analysis.” *Id.* at 1241.

We note that claims, like claim 1, directed to receiving information and generating tasks to be performed based on identified rules, have been determined to be directed to an abstract idea. See *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344 (Fed. Cir. 2013) (“The abstract idea at the heart of system claim 1 of the ’284 patent is ‘generating tasks [based on] rules ... to be completed upon the occurrence of an event.’”). “[W]e have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Elec. Power Grp.*, 830 F.3d at 1353. “In a similar vein, we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Id.* at 1354. “And we have recognized that 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.” *Id.* “Here, the claims are clearly focused on the combination of those abstract-idea processes.” *Id.*

Appellants do not argue that they invented a handheld computing device, a graphical user interface, or a processor. Nor do we see how the recitation of a handheld computing device, a graphical user interface, and a processor, even in conjunction with the recited functions, “ensure[s] ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].” *Alice*, 573 U.S. at 221 (brackets in original) (quoting *Mayo*, 566 U.S. at 77.) Claim 1 uses generic computer components as tools to perform the abstract idea. (See Spec. ¶¶ 25, 26, 31; see also *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (and cases cited therein).)

With regard to Appellants’ argument that claim 1 is “directed to improving computer functionality” (Appeal Br. 10, emphasis omitted), Appellants provide no persuasive evidence in support of this assertion. (See Appeal Br. 10–11; see also Answer 14.) The asserted improvement is to a method of organizing human activity, and, in particular, to a business practice regarding data collection for supply chain management. (See Spec. ¶ 1.) In short, “[t]hese claims in substance [are] directed to nothing more than the performance of an abstract business practice . . . using a conventional computer. Such claims are not patent-eligible.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014).

In view of the above, we agree with the Examiner that claim 1 is directed to an abstract idea.

Step two of the *Alice* framework has been described “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*, 573 U.S. at 217–18 (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73).

Appellants argue that “claim 1 at least recites rendering output as well as making a determination based on the input received.” (Appeal Br. 12.)

As discussed above, claim 1 is directed to the abstract idea of organizing human activity, i.e., “managing personal behavior or relationships” and “following rules or instructions.” (See 2019 Guidance at 52.) The additional elements of a handheld computing device, a graphical user interface, and a processor, do not recite significantly more than the ineligible concept itself. Nor, as discussed above, do Appellants argue that they invented a handheld computing device, a graphical user interface, or a processor.

[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.

Alice, 573 U.S. at 223 (citations omitted).

“[T]he 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. They do not. Claim 1 relates to receiving information, analyzing information and displaying results, receiving

additional information, analyzing the additional information and displaying results.

Taking the claim elements separately, the function performed by the generic computer components at each step is purely conventional. Receiving information, analyzing information and displaying results are basic computer functions, i.e., they are well-understood, routine, and conventional functions previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1356 (The claims “do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept”); *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.”).

Considered as an ordered combination, the generic computer components of Appellants’ method add nothing that is not already present when the steps are considered separately. For example, claim 1 does not, as discussed above, purport to improve the functioning of the components themselves. Nor does it effect an improvement in any other technology or technical field. Instead, claim 1 amounts to nothing significantly more than an instruction to apply the abstract idea using generic computer components. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

Appellants’ other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive

of error. (*See* 2019 Guidance at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R–08.2017 of the MPEP (published Jan. 2018) should not be relied upon.”).)

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 101. Claims 2–6 and 8–20 are not separately argued (*see* Appeal Br. 12) and fall with claim 1 (*see* 37 C.F.R. § 41.37(c)(1)(iv)).

The § 103(a) rejection

Claim 1 recites, in part,

rendering at said graphical-user interface including outputting information for an operator of said handheld computing device describing a specific element of said data to be collected and including a symbolic or textual indication of a type of a data-collection device to be used to collect said specific element of said data, said data collection device being separate from said handheld computing device;

receiving, via at least said data-collection device, data-collection input for each subtask of said first set of subtasks

Appellants argue that Sholl does not teach a separate data collection device and “that Sholl fails to teach or contemplate a GUI for outputting an ‘indication of a type of a data-collection device to be used’ whatsoever.” (Appeal Br. 15, emphasis omitted.)

The Examiner finds that Sholl need not teach this limitation because the “indication of a type of a data-collection device to be used” simply refers to a description of the data collection device, which is merely depicted in a graphical-user interface. This data content is not used for any additional purpose and it has no bearing on the structural or functional limitations in the claims. It is non-functional, descriptive material.

(Answer 15.)

As an initial matter, we note that “printed matter may well constitute structural limitations upon which patentability can be predicated.” *In re Gulack*, 703 F.2d 1381, 1385 n.8 (Fed. Cir. 1983). However, “if a limitation claims (a) printed matter that (b) is not functionally or structurally related to the physical substrate holding the printed matter, it does not lend any patentable weight to the patentability analysis.” *In re Distefano*, 808 F.3d 845, 848 (Fed. Cir. 2015). The Federal Circuit

found in *In re Lowry*, 32 F.3d 1579 (Fed. Cir. 1994), that a computer-based structural database was not printed matter, not because it involved a computer, but because the data structures “contain[ed] both information used by application programs and information regarding their physical interrelationships within a memory.” *Lowry*, 32 F.3d at 1583–84.

(*Id.*) Here, claim 1 recites that a particular “type of a data-collection device [is] to be used to collect said specific element of said data.” That is, the recitation in claim 1 of a particular “type of a data-collection device” is interrelated with a “specific element of said data.” It is also interrelated with “receiving via at least said data-collection device, data-collection input for each subtask of said first set of subtasks” and “determining . . . from said data-collection input if said first set of subtasks is performed,” as also recited in claim 1. Therefore, even though the recitation in claim 1 of “a symbolic or textual indication of a type of a data-collection device” relates to printed matter, for the reasons discussed, we find that the limitation is entitled to patentable weight.

Regardless, the Examiner additionally finds that “Official Notice has been taken that it was old and well-known in the art at the time of Applicant’s invention to combine functions into a single device or to offer

various functions in separate dedicated devices” and that “[m]odifying Sholl to distribute functions among various divides is a substitutable option.”

(Answer 15; *see also* Final Action 10–11.) But the Examiner does not sufficiently explain the reasoning with rational underpinnings to modify Sholl in view of Official Notice to “output[] information . . . describing a specific element of said data to be collected and including a[n] . . . indication of a type of a data-collection device to be used to collect said specific element of said data,” as recited in claim 1. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007), citing *In re Kahn*, 441 F.3d 997, 988 (Fed. Cir. 2006).

Therefore, we agree that the Examiner erred in rejecting claim 1 and dependent claims 2–6 and 8–18 under § 103(a). Independent claim 19 contains similar language and, for similar reasons, we agree that the Examiner erred in rejecting claim 19 and dependent claim 20.

DECISION

The Examiner’s rejection of claims 1–6 and 8–20 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejection of claims 1–6 and 8–20 under 35 U.S.C. § 103(a) is reversed.

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