UNITED STATES PATENT AND TRADEMARK OFFICE

**UNITED STATES DEPARTMENT OF COMMERCE**
**United States Patent and Trademark Office**
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 13/961,509 | 08/07/2013 | JAMES NEAL RICHTER | ORA120925-US-DIV-2(O-491) | 3065 |

51444 7590 12/18/2019

Kraguljac Law Group/Oracle
4700 Rockside Road
Summit One, Suite 510
Independence, OH 44131

| EXAMINER | |
|---|---|
| SINGH, GURKANWALJIT | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3683 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 12/18/2019 | ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DDay@KragLaw.com
MPusti@KragLaw.com
PTOMail@KragLaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* JAMES NEAL RICHTER

---

Appeal 2018-000768
Application 13/961,509
Technology Center 3600

---

Before CARL W. WHITEHEAD JR., JON M. JURGOVAN and SCOTT RAEVSKY, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] is appealing the final rejection of claims 1–12 under 35 U.S.C. § 134(a). Appeal Brief 3. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies Oracle International Corporation as the real party in interest. Appeal Brief 3.

*Introduction*

The invention is directed to a "sales automation system and a method for scoring sales representative performance and forecasting future sales representative performance." Specification ¶ 8.

*Representative Claim*

1. A sales automation method comprising:

generating, by a computer system, learned sales data modeled from raw sales records of a subject sales person using machine learning queuing model techniques;

storing, by the computer system, the learned sales data in a central data repository of a business;

accessing, by the computer system, the central data repository of the business, the central data repository having:

time stamped cached sales records,

data representing goal sales data for a top-performing sales person,

the learned sales data, and

performance metrics of the subject sales person;

accessing, by a computer system, a repository of raw sales records including raw sales related data of the subject sales person;

deriving, by the computer system, sales data forecasts of the business for a goal-revenue sales metric based on the data representing goal sales data for the top-performing sales person, the learned sales data, the performance metrics, and the raw sales records;

defining, by the computer system, a desired sales goal for the business relative to the forecasted goal-revenue sales metric;

receiving, by the computer system, an input scenario that specifies a sequence of operations to be performed utilizing the learned sales data, the raw sales records, and the desired sales goal; and

deriving, by the computer system using the input scenario, a revenue goal for the sales person required to achieve the desired sales goal.

*Rejection on Appeal*[2]

Claims 1–12 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. Final Action 9–12.

ANALYSIS

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed April 12, 2017), the Reply Brief (filed October 30, 2017), the Final Action (mailed September 16, 2016) and the Answer (mailed August 31, 2017), for the respective details.

35 U.S.C. § 101 Rejection

The Examiner determines the claims are patent ineligible under 35 U.S.C. § 101 because the claims are directed to an abstract idea comprising commercial practices wherein a "process of generating a learned sales model modeled from raw sales records, deriving sales data forecasts, defining a desired sales goal, and deriving a revenue goal for the sales person all describe the abstract idea." Final Action 9; *see Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (describing the two-part framework "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts").

After the mailing of the Answer and the filing of the Briefs in this case, the USPTO published revised guidance on the application of § 101.

[2] The 35 U.S.C. § 112 and § 103 rejections of claims 1–12 were withdrawn by the Examiner. *See* Final Rejection 2.

*2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter "Memorandum"). Under the Memorandum, we first look to whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
> (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP[3] § 2106.05(a)–(c), (e)–(h) (9th ed. 2018)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

> (3) adds a specific limitation beyond the judicial exception that are not "well-understood, routine, conventional" in the field (*see* MPEP § 2106.05(d)); or
> (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See* Memorandum.

We are not persuaded the Examiner's rejection is in error. We adopt the Examiner's findings and conclusions as our own and we add the following primarily for emphasis and clarification with respect to the Memorandum.

Appellant argues the pending claims are not directed to an abstract idea because, "[t]he claims, as presented, do not claim a mere abstract idea and instead are directed to proper statutory subject matter." Appeal Brief 6.

[3] Manual of Patent Examining Procedure.

We agree with the Examiner's determination that the claims are directed to an abstract idea. *See* Final Action 9.

*Alice/Mayo—Step 1 (Abstract Idea)*
*Step 2A–Prongs 1 and 2 identified in the Revised Guidance*

Step 2A, Prong One

The Abstract discloses:

> A sales automation system and method, namely a system and method for scoring sales representative performance and forecasting future sales representative performance. These scoring and forecasting techniques can apply to a sales representative monitoring his own performance, comparing himself to others within the organization (or even between organizations using methods described in application), contemplating which job duties are falling behind and which are ahead of schedule, and numerous other related activities.

The Specification discloses:

> One aspect of the inventive subject matter includes a sales automation system and a method for scoring sales representative performance and forecasting future sales representative performance. These scoring and forecasting techniques can apply to a sales representative monitoring his own performance, comparing himself to others within the organization (or even between organizations using methods described in application), contemplating which job duties are falling behind and which are ahead of schedule, and numerous other related activities. Similarly, with the sales representative providing a full set of performance data, the system is in a position to aid a sales manager identify which sales representatives are behind others and why, as well as help with resource planning should requirements, such as quotas or staffing, change.

Specification ¶ 8.

Claim 1 recites a "sales automation method" wherein:

1. generating, by a computer system, learned sales data modeled from raw sales records of a subject sales person using machine learning queuing model techniques;
2. deriving, by the computer system, sales data forecasts of the business for a goal-revenue sales metric based on the data representing goal sales data for the top-performing sales person, the learned sales data, the performance metrics, and the raw sales records;
3. defining, by the computer system, a desired sales goal for the business relative to the forecasted goal-revenue sales metric;
4. receiving, by the computer system, an input scenario that specifies a sequence of operations to be performed utilizing the learned sales data, the raw sales records, and the desired sales goal; and
5. deriving, by the computer system using the input scenario, a revenue goal for the sales person required to achieve the desired sales goal.

These steps recite fundamental economic principles or practices and/or commercial or legal interactions; thus, the claim recites "certain methods of organizing human activity," an abstract idea. *See* Memorandum, Section I (Groupings of Abstract Ideas); *see also* Specification ¶¶ 8–13. Our reviewing courts have found claims to be directed to abstract ideas when they recited similar subject matter. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (holding that concept of "creating a contractual relationship—a 'transaction performance guaranty'" is an abstract idea); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed. Cir. 2009)

(holding methods "directed to organizing business or legal relationships in the structuring of a sales force (or marketing company)" to be ineligible); *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). Therefore, we conclude the claims recite an abstract idea pursuant to Step 2A, Prong One of the Guidance. *See* Memorandum, Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception).

Step 2A, Prong Two

Under Prong Two of the Revised Guidance, we must determine "whether the claim as a whole integrates the recited judicial exception into a practical application of the exception." Further, a "claim that integrates a judicial exception into a practical application will apply, rely on, or use 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." Memorandum, Section III(A)(2).

We acknowledge that some of the considerations at Step 2A, Prong 2, properly may be evaluated under Step 2 of *Alice* (Step 2B of the Office guidance). For purposes of maintaining consistent treatment within the Office, we evaluate them under Step 1 of *Alice* (Step 2A of the Office guidance). *See* Memorandum at 55 n.25, 27–32.

Appellant contends that in, "*DDR Holdings, LLC v. Hotels.com, L.P.*, [773 F.3d 1245, 1259 (Fed. Cir. 2014)] the Federal Circuit emphasized that claims that do not preempt every application of an idea, and particularly claims that provide a technical solution to a technical problem are patent

eligible under § 101." Appeal Brief 8. Appellant argues, "[a]s such, even if the claims are considered to be directed to the alleged abstract idea, the claims do not attempt to preempt every application of the allegedly abstract idea of 'deriving a revenue goal for a sales person.'" Appeal Brief 9.

The U.S. Supreme Court has described "the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption." *Alice*, 573 U.S. at 216. However, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. As our reviewing court has explained, "[t]he Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability," and "[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 216). And, although "preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Id.* Moreover, "[w]here a patent's claims are deemed only to disclose patent ineligible subject matter under the *[Alice/Mayo]* framework . . ., preemption concerns are fully addressed and made moot." *Id.*; *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701 (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.").

Further, we find Appellant's claims are distinguished from those claims that our reviewing court has found to be patent eligible by virtue of

reciting technological improvements to a computer system. *See, e.g.*, *DDR Holdings*, 773 F.3d at 1249, 1257 (holding that claims reciting computer processor for serving "composite web page" were patent eligible because "the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks"); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259 (Fed. Cir. 2017) (holding that claims directed to "an improved computer memory system" having many benefits were patent eligible).

In *McRO*[4], the Federal Circuit concluded that the claim, when considered as a whole, was directed to a "technological improvement over the existing, manual 3-D animation techniques" through the "use [of] limited rules . . . specifically designed to achieve an improved technological result in conventional industry practice." *McRO*, 837 F.3d at 1316.

Specifically, the Federal Circuit found that the claimed rules allowed computers to produce accurate and realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animators; and the rules were limiting because they defined morph weight sets as a function of phoneme sub-sequences. *McRO*, 837 F.3d at 1313.

We find no evidence of record here that the present situation is like the one in *McRO* where computers had been unable to make certain subjective determinations, e.g., regarding morph weight and phoneme timings, which could only be made prior to the claimed invention by human animators. The Background section of one of the patents at issue in *McRO*, Rosenfeld (US

[4] *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1303 (Fed. Cir. 2016).

Patent 6,307,576 B1; issued Oct. 23, 2001), includes a description of the admitted prior art method and the shortcomings associated with that prior method. *See McRO*, 837 F.3d at 1303–06. There is no comparable discussion in Appellant's Specification or elsewhere of record. *See* Appeal Brief 8–10. Further, as the Federal Circuit has explained, a "claim for a *new* abstract idea is still an abstract idea." *Synopsis, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). Even assuming the technique claimed was "[g]roundbreaking, innovative, or even brilliant," that would not be enough for the claimed abstract idea to be patent eligible. *See Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013).

Subsequently, we do not find Appellant's arguments persuasive because the claims utilize a consumer's personal computing device such as a smart phone without any improvement to the functioning of the devices themselves. *See* Specification ¶¶ 30–37; s*ee also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) ("[W]e find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea . . . the focus of the claims is on the specific asserted improvement in computer capabilities (i.e., the self-referential table for a computer database) or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool."). The claims do not recite an additional element or elements that reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field. *See Alice*, 573 U.S. at 222 ("In holding that the process was patent ineligible, we rejected the argument that 'implement[ing] a principle in some specific fashion' will 'automatically

fal[l] within the patentable subject matter of § 101.'" (Alterations in original) (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978))).

Accordingly, we determine the claims do not integrate the judicial exception into a practical application. *See* Memorandum, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application).

*Alice/Mayo—Step 2 (Inventive Concept)*
*Step 2B identified in the Revised Guidance*

Step 2B

Next, we determine whether the claims include additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept. *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73). Appellant contends, "even if the claims are considered to be directed to the alleged abstract idea, the claims do not attempt to preempt every application of the allegedly abstract idea of 'deriving a revenue goal for a sales person'" and "[t]his is exemplified by the fact that none of the claims 1 - 12 currently face rejections on § 102 or § 103 grounds." Appeal Brief 9. We do not find Appellant's preemption argument persuasive nor do we find Appellant's novelty argument persuasive for the reason we stated above.

Appellant concludes, "[t]his is clear evidence that the claims require 'significantly more' than the alleged abstract idea in contradiction to the assertions made in the Final Office Action. *Final Office Action*, pp. 6 - 7 and 9 - 10." Appeal Brief 9. The Examiner determines:

> Claims 1-12 do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the steps of storing the learned sales model in a central repository, accessing a central database, receiving an input scenario and accessing a repository of raw sales records merely recite insignificant presolution data gathering activity.

Final Action 9.

The Examiner also determines, "[t]he generic computer simply performs generic computer functions of receiving and processing data. Generic computers performing generic computer functions, alone, do not amount to significantly more than the abstract idea." Final Action 9–10. We agree with the Examiner's findings and find that the claims do not recite additional elements that would have rendered the claim patent eligible. *See* Memorandum, Section III(B); *see Alice* ("we consider the elements of each claim both individually and 'as an ordered combination'" to determine whether the claim includes "significantly more" than the ineligible concept); *see also BASCOM*[5] ("an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.").

Accordingly, we conclude claims 1–12 are directed to a fundamental economic practice, which is one of certain methods of organizing human activity identified in the Memorandum and thus an abstract idea wherein the claims do not recite limitations that amount to significantly more than the abstract idea itself. We sustain the Examiner's § 101 rejection of claims 1–12.

CONCLUSION

[5] *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, No. 15-1763 (Fed. Cir. June 27, 2016).

In summary:

| Claims Rejected | 35 U.S.C. § | Reference(s)/Basis | Affirmed | Reversed |
|---|---|---|---|---|
| 1–12 | 101 | Eligibility | 1–12 | |

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED