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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WESLEY KENNETH WILHELM and CHEN ARI KIRSCH

Appeal 2018-000777
Application 14/053,791
Technology Center 3600

Before MURRIEL E. CRAWFORD, AMEE A. SHAH, and ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision rejecting claims 1, 6–9, 12, 18, and 22–24, which constitute all the claims pending in this application. Claims 2–5, 10, 11, 13–

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. "The real parties in interest in this Appeal are Actimize Ltd., the assignee of U.S. Patent Application No. 14/053,791, and Nice-Systems Ltd., its parent company." Appeal Br. 1.

17, and 19–21 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). An Oral Hearing was held on October 24, 2019.

We AFFIRM.

ILLUSTRATIVE CLAIM

1. A computer-implemented method for financial risk assessment of international monetary transactions, the method comprising:

receiving at a first processor, from a source, data related to an international monetary transaction from a transferring country to a receiving country, the source data related to one of a credit card transaction, a retail transfer, and a commercial transfer;

sending from the first processor to a second processor the financial data related to the international monetary transaction and a request to assess a risk of the international monetary transaction, wherein the financial data comprises an amount of money to be transferred and wherein the international monetary transaction is selected from the group consisting of a commercial transfer, a retail transfer and a credit card transaction;

receiving the financial data by the second processor;

converting, by the second processor, the amount of money to be transferred to an amount of money given in base currency units;

receiving a plurality of power parity (PPP) values related to the receiving country, each PPP value received from a source;

calculating, by the second processor, for each PPP value, a corresponding weight, based on a reliability rating for the source for the PPP value, the weight depending on the receiving country;

determining, by the second processor, a universal currency for the receiving country by summing the

> plurality of PPP values, each PPP value multiplied by the weight corresponding to the PPP value;
>
> determining, by the second processor, a universal value by multiplying the amount given in base currency units by the universal currency;
>
> comparing, by the second processor, the universal value with a predetermined threshold;
>
> if the universal value is equal or above the predetermined threshold, performing one of: alerting the first processor by the second processor that the transaction is risky and blocking the international monetary transaction by the first processor; and alerting a user via a user interface; and
>
> if the universal value is below the predetermined threshold, instructing the first processor by the second processor to continue with the international monetary transaction.

REJECTION[2]

Claims 1, 6–9, 12, 18, and 22–24 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. Yet, subject matter belonging to any of the statutory categories may, nevertheless, be ineligible for patenting. The Supreme

[2] The Non-Final Office Action (page 3) also rejects claims 22–24 under 35 U.S.C. § 112(a). This rejection is withdrawn. Answer 2.

Court has interpreted § 101 to exclude laws of nature, natural phenomena, and abstract ideas, because they are regarded as the basic tools of scientific and technological work, such that including them within the domain of patent protection would risk inhibiting future innovation premised upon them. *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013).

Of course, "[a]t some level, 'all inventions . . . embody, use, reflect, rest upon, or apply'" these basic tools of scientific and technological work. *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). Accordingly, evaluating ineligible subject matter, under these judicial exclusions, involves a two-step framework for "distinguish[ing] between patents that claim the buildin[g] block[s] of human ingenuity and those that integrate the building blocks into something more, thereby transform[ing] them into a patent-eligible invention." *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 88–89 (2012)). The first step determines whether the claim is directed to judicially excluded subject matter (such as a so-called "abstract idea"); the second step determines whether there are any "additional elements" recited in the claim that (either individually or as an "ordered combination") amount to "significantly more" than the identified judicially excepted subject matter itself. *Id.* at 217–18.

The USPTO recently published revised guidance on the application of § 101, in accordance with judicial precedent. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) ("*2019 Revised Guidance*"). Under the *2019 Revised Guidance*, a claim is "directed to" an abstract idea, only if the claim recites any of (1) mathematical concepts, (2) certain methods of organizing human activity, and (3) mental

processes — without integrating such abstract idea into a "practical application," i.e., without "apply[ing], rely[ing] on, or us[ing] 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." *Id.* at 52–55. The considerations articulated in MPEP § 2106.05(a)–(c) and (e)–(h) bear upon whether a claim element (or combination of elements) integrates an abstract idea into a practical application. *Id.* at 55. A claim that is "directed to" an abstract idea constitutes ineligible subject matter, unless the claim recites an additional element (or combination of elements) amounting to significantly more than the abstract idea. *Id.* at 56.

Although created "[i]n accordance with judicial precedent" (*id.* at 52), the *2019 Revised Guidance* enumerates the analytical steps differently than the Supreme Court's *Alice* opinion. Step 1 of the *2019 Revised Guidance* addresses whether the claimed subject matter falls within any of the statutory categories of § 101. *Id.* at 53–54. Step 2A, Prong One, concerns whether the claim at issue recites ineligible subject matter and, if an abstract idea is recited, Step 2A, Prong Two, addresses whether the recited abstract idea is integrated into a practical application. *Id.* at 54–55. Unless such integration exists, the analysis proceeds to Step 2B, in order to determine whether any additional element (or combination of elements) amounts to significantly more than the identified abstract idea. *Id.* at 56.

With respect to Step 1 of the *2019 Revised Guidance*, the only dispute concerns the Examiner's position that independent claim 12 runs afoul of § 101, because "it appears that Applicant is attempting to claim a computer

program product and an article in one claim embracing both statutory categories." Non-Final Act. 11.

In relevant part, claim 12 recites:

> 12. An article comprising a non-transitory computer-readable storage medium, having instructions stored thereon that when executed by a first processor, cause the first processor to:
>
> receive, from a second processor, financial data related to an international monetary transaction from a transferring country to a receiving country and a request to assess a risk of the international monetary transaction, wherein the financial data comprises an amount of money to be transferred, the second processor configured to receive from a source data related to the international monetary transaction, the source data related to one of a credit card transaction, a retail transfer, and a commercial transfer, wherein the international monetary transaction is selected from the group consisting of a commercial transfer, a retail transfer and a credit card transaction.

The Examiner states:

> [I]t appears that Appellant is attempting to have steps integral to the method being conducted by a computer readable medium from a process that is outside of the instructions that can be controlled by the first processor carrying out stored instructions. There is no recitation that the subsequent second processor and (presumably) a processor used to send the source data, are being conducted by a non-transitory computer readable storage medium having instructions which when executed by the second processor and the presumed processor of the source data, thus no bounds on if it may be a signal, code or something else, thus triggering the rejection under 101.

Answer 22.

Our reviewing court has held that "[a] transitory, propagating signal . . . is not a 'process, machine, manufacture, or composition of matter'" (the

"categories defin[ing] the explicit scope and reach of subject matter patentable under 35 U.S.C. § 101"); "thus, such a signal cannot be patentable subject matter." *In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007). Yet, the concern described in *Nuijten* does not apply to claim 12. Indeed, *Nuijten* addressed whether a "signal" itself should be regarded as eligible subject matter — not the eligibility of "any apparatus for generating, receiving, processing, or storing the signals," which *Nuijten* does not question — and even endorses. *Nuijten*, 500 F.3d at 1351. Accordingly, the Examiner has not adequately demonstrated that claim 12 constitutes non-statutory subject matter.

Turning to Step 2A, Prong One, of the analytical framework delineated in the *2019 Revised Guidance*, the Examiner identifies discrete portions of claim 1 that are said to express concepts that court decisions have regarded as judicially excepted abstract ideas. Non-Final Act. 5–7. Alternatively, the Examiner describes claim 1 as a method for performing "financial risk assessment of international monetary transactions," which the Examiner regards as "an abstract idea." *Id.* at 7. *See also* Answer 11–12.

The Examiner's description of "financial risk assessment of international monetary transactions" is manifest in the following italicized limitations of claim 1:

> 1. A computer-implemented method for *financial risk assessment of international monetary transactions*, the method comprising:
>
> > *receiving* at a first processor, from a source, *data related to an international monetary transaction from a transferring country to a receiving country, the source data related to one of a credit card transaction, a retail transfer, and a commercial transfer*;

sending from the first processor to a second processor *the financial data related to the international monetary transaction and a request to assess a risk of the international monetary transaction, wherein the financial data comprises an amount of money to be transferred and wherein the international monetary transaction is selected from the group consisting of a commercial transfer, a retail transfer and a credit card transaction*;

receiving the financial data by the second processor;

converting, by the second processor, *the amount of money to be transferred to an amount of money given in base currency units*;

receiving a plurality of power parity (PPP) values related to the receiving country, each PPP value received from a source;

calculating, by the second processor, *for each PPP value, a corresponding weight, based on a reliability rating for the source for the PPP value, the weight depending on the receiving country*;

determining, by the second processor, *a universal currency for the receiving country by summing the plurality of PPP values, each PPP value multiplied by the weight corresponding to the PPP value*;

determining, by the second processor, *a universal value by multiplying the amount given in base currency units by the universal currency*;

comparing, by the second processor, *the universal value with a predetermined threshold*;

if the universal value is equal or above the predetermined threshold, performing one of: alerting the first processor by the second *processor that the transaction is risky and blocking the international monetary transaction* by the first processor; and *alerting a user* via a user interface; and

> *if the universal value is below the predetermined threshold, instructing* the first processor by the second processor *to continue with the international monetary transaction.*

Viewed through the lens of the *2019 Revised Guidance*, 84 Fed. Reg. at 52, the identified claim limitations depict the claimed subject matter as one of the ineligible "[c]ertain methods of organizing human activity" that include "fundamental economic principles or practices" (such as "hedging, insurance, [and] mitigating risk"), as well as "commercial or legal interactions" (such as "agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; [and] business relations"). Indeed, "mitigating risk" (*id.*) is the precise object of claim 1. Similarly, the Supreme Court, in *Bilski v. Kappos*, 561 U.S. 593, 611 (2010), has determined "the basic concept of hedging, or protecting against risk" to be an ineligible abstract idea and, in *Alice*, 573 U.S. at 219–20, has characterized "the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk," as a fundamental economic practice and an abstract idea judicially excepted from patent eligibility. Therefore, the Examiner's analysis sufficiently establishes that claim 1 recites a judicial exception.

The Appellant's arguments to the contrary are not persuasive. The Appellant asserts: "[T]he claims describe a technical method of manipulating financial data, using a distributed multi-processor system"; "because the claims touch on financial data does not mean that the technical process described is a method of organizing human activity or fundamental economic practice." Appeal Br. 7. *See also* Reply Br. 1–2 ("[T]he claims are not a method of organizing human activity at least because the data items

flow through several servers and a network, and include technology that allows billions of transactions to be improved or blocked. A human simply cannot do this."). Yet, the Appellant does not address the particular character of the "[c]ertain methods of organizing human activity" that the courts have identified as this category of judicially excepted subject matter. *See 2019 Revised Guidance*, 84 Fed. Reg. at 52.

Accordingly, we are not persuaded of error in the rejection, in regard to Step 2A, Prong One of the *2019 Revised Guidance*.

Turning to Step 2A, Prong Two, unless a claim that recites a judicial exception (such as an abstract idea) "integrates the recited judicial exception into a practical application of that exception," the claim is "directed to" the judicial exception. *Id.* at 53. The analysis of such an "integration into a practical application" involves "[i]dentifying . . . any additional elements recited in the claim beyond the judicial exception(s)" and "evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application." *Id*. at 54–55. Among the considerations "indicative that an additional element (or combination of elements) may have integrated the exception into a practical application" is whether "[a]n additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field." *Id.* at 55 (footnote omitted). "[W]hether an additional element or combination of elements integrate the exception into a practical application should be evaluated on the claim as a whole." *Id.* at 55 n.24.

In regard to the inquiries of Step 2A, Prong Two, the Appellant argues that the present claims provide "a new detailed series of technical operations which operate with and cause actions to improve preexisting technology."

Appeal Br. 9. The Appellant indicates that the source of the asserted improvement involves "the concrete action of 'blocking the international monetary transaction by the first processor' or allowing the transaction to continue, which causes distributed computer networks to allow or stop the flow of the complex data objects described." *Id.* But this feature is part of the judicially excepted subject matter identified above. As such, it cannot constitute an "additional element[ ]" that might accomplish an integration of such an ineligible concept into a practical application. *See 2019 Revised Guidance,* 84 Fed. Reg. at 54–55.

Further, the Appellant contends that the claims in this Appeal provide "a computer-centric solution to a problem occurring in computer financial systems" and "include technical details lacking in financial-related claims typically declared to be not patent-eligible," invoking the Federal Circuit's analysis in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). Appeal Br. 7. Yet, unlike the claims in *DDR Holdings*, 773 F.3d at 1258, the Appellant does not indicate how the claims might produce "a result that overrides the routine and conventional sequence of events ordinarily triggered" by the operation of the instrumentalities involved, as opposed to "operating in its normal, expected manner."

Therefore, the Appellant does not persuasively argue that the Examiner erred, in regard to Step 2A, Prong Two, of the *2019 Revised Guidance*.

Turning to Step 2B of the *2019 Revised Guidance* (*id.* at 56), a claim that recites a judicial exception (such as an abstract idea) might, nevertheless, be patent-eligible, if the claim contains "additional elements amount[ing] to significantly more than the exception itself" — i.e., "a

specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present." *See Alice*, 573 U.S. at 223 ("[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.")

The Appellant argues that "[t]he present claims . . . describe an ordered combination which is significantly more than an abstract idea," in regard to "interaction among processors and causing action among the processors," on account of the following limitations of claim 1:

> if the universal value is equal or above the predetermined threshold, performing one of: alerting the first processor by the second processor that the transaction is risky and blocking the international monetary transaction by the first processor; and alerting a user via a user interface; and
>
> if the universal value is below the predetermined threshold, instructing the first processor by the second processor to continue with the international monetary transaction.

Appeal Br. 17–18.

Yet, these claim limitations may not be regarded as "additional elements" that might amount to significantly more than a judicial exception, because they are part of the abstract idea identified above. *See BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) ("It has been clear since *Alice* that a claimed invention's use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention 'significantly more' than that ineligible concept.") Therefore, we are not persuaded of error in the Examiner's analysis corresponding to Step 2B of the *2019 Revised Guidance*.

In view of the foregoing, we sustain the rejection of independent claim 1 and, for similar reasons, independent claims 8 and 12, and dependent claims 6, 7, 9, 18, and 22–24 (none of which is argued separately) under 35 U.S.C. § 101.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 6–9, 12, 18, 22–24	101	Eligibility	1, 6–9, 12, 18, 22–24	
Overall Outcome			1, 6–9, 12, 18, 22–24	

TIME PERIOD FOR RESPONSE

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