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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK J. DAVIDSON

Appeal 2018-001050
Application 13/435,592¹
Technology Center 3600

Before JOHN A. EVANS, HUNG H. BUI, and AARON W. MOORE,
Administrative Patent Judges.

BUI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 1–9, 11–13, and 27, which are all the claims pending in the application. Claims 10 and 14–26 are cancelled. Claims App’x. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellant, the real party in interest is United Parcel Service of America, Inc. Appeal Br. 2.

² Our Decision refers to Appellant’s Appeal Brief (“Appeal Br.”) filed June 16, 2017; Reply Brief (“Reply Br.”) filed November 9, 2017; Examiner’s Answer (“Ans.”) mailed September 13, 2017; Non-Final Office Action (“Non-Final Act.”) mailed March 23, 2017; and original Specification (“Spec.”) filed March 30, 2012.

STATEMENT OF THE CASE

Appellant's invention

Appellant's invention relates to "systems and methods for capturing and evaluating operational data in order to improve operational efficiencies in a variety of business contexts." Spec. 2:12–13. According to Appellant, "a fleet management computer system [is provided, shown in Figure 2] for assessing operational delay." Spec. 2:15–16.

Appellant's Figure 2 is reproduced below with additional markings for illustration.

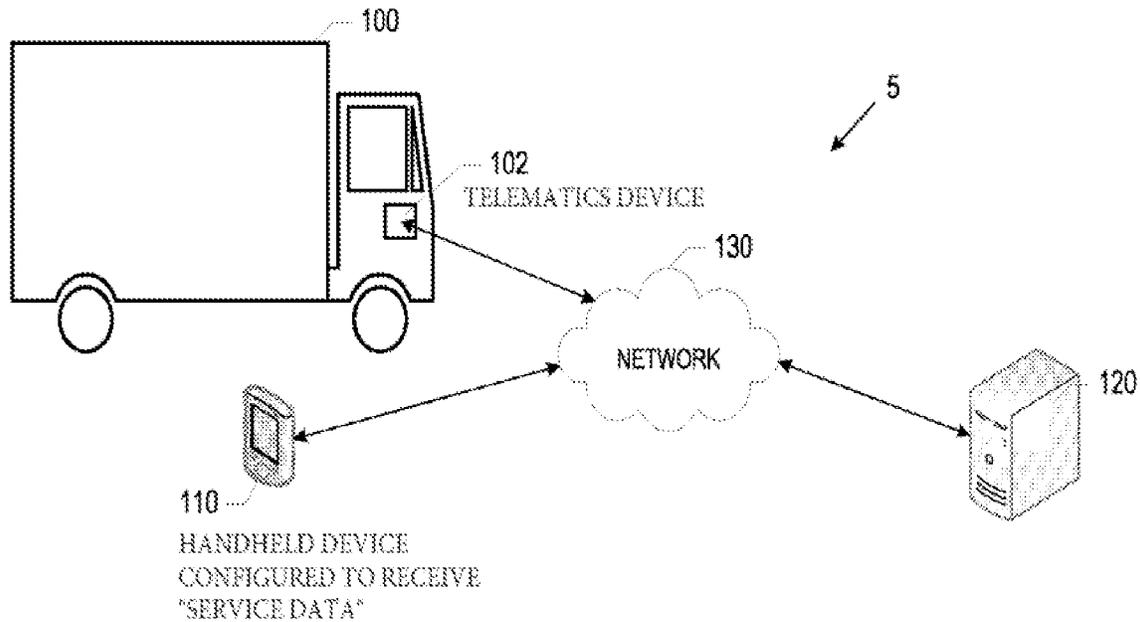


Figure 2 shows a fleet management system 5 for capturing and storing operational data for a fleet of vehicles, and for evaluating various operational efficiencies based on operational data including (1) "telematics data" received from telematics device 102 and (2) "service data" received from handheld device 110.

As shown in Figure 2, one or more processors included in central server 120 are configured to perform: "[1] receiving service data [and

contextual data], the service data being indicative of one or more service dynamics for at least one vehicle operator during one or more time periods; [2] identifying delay code segments based on the service data, each of the delay code segments representing an occurrence indicated by the vehicle operator as delaying a delivery-related activity during a certain period of time; and [3] generating a graphical display indicating the identified delay code segments.” Spec. 3:9–14. According to Appellant, in addition to receiving telematics data from telematics device **102**, handheld device (i.e., portable data acquisition device) **110** may also be configured to collect and transmit telematics data on its own as well as service data (e.g., service data input by a driver) including its contextual data, and location information from a Global Positioning System (GPS) device. Spec. 25:13–16, 26:1–26, 27:8–17, 34:17–20.

Illustrative Claims

Claims 1 and 27 are independent. Claim 1 is illustrative of the claimed subject matter, as reproduced below with disputed limitations in *italics*:

1. A fleet management computer system for assessing operational delay code segments attributable to one or more delivery segments, said fleet management computer system comprising:

one or more memory storage areas; and

one or more processors in communication with said one or more memory storage areas;

wherein said one or more processors are, collectively, configured to:

receive service data and corresponding contextual data, said service data being indicative of one or more service dynamics for at least one vehicle operator during one or more

time periods, wherein said service data comprises computer-readable data generated by [1] a *handheld device* and indicative of user input received by the *handheld device*, and said contextual data comprises computer-readable data generated by the handheld device concurrently with the service data and indicative of a time the service data was generated;

identify, based at least in part on said user input received by the handheld device and said contextual data generated by the handheld device, service data indicative of one or more delivery segment starts and service data indicative of one or more delivery segment ends;

[2] *link service data indicative of a delivery segment start with service data indicative of a chronologically adjacent delivery segment end to identify one or more delivery segments each comprising service data captured between linked delivery segment start data and delivery segment end data, with each of the one or more delivery segments representing a delivery-related activity performed by said vehicle operator;*

identify, based at least in part on said user input received by the handheld device and said contextual data generated by the handheld device, service data indicative of one or more delay code segment starts and service data indicative of one or more delay code segment ends;

[3] *link service data indicative of a delay code segment start with service data indicative of a chronologically adjacent delay code segment end to identify one or more delay code segments each comprising service data captured between linked delay code segment start data and delay code segment end data, with each of the one or more delay code segments representing an occurrence indicated by said vehicle operator as delaying a delivery-related activity during a certain period of time;*

associate one or more respective delay code segments with a subsequent delivery segment delayed by the occurrence of the one or more respective delay code segments by identifying the one or more respective delay code segments as having corresponding contextual data indicating the one or more respective delay code segments occurred between a delivery

segment end corresponding to a prior delivery segment and a delivery segment start corresponding to the subsequent delivery segment; and

generate a graphical display indicating said respective delay code segments as delaying the delivery-related activity of the subsequent delivery segment associated with the one or more respective delay code segments, wherein said graphical display is provided for display via a graphical user interface comprising an interactive geographical map and said geographical map comprises a visible indication of a location of one or more of said identified delay code segments.

Appeal Br. 34 (Claims App'x) (bracketing added).

EXAMINER'S REJECTIONS and REFERENCES

(1) Claims 1–19, 11–13, and 27 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a patent-ineligible “abstract idea” without significantly more. Non-Final Act. 17–19.

(2) Claims 1–9, 12, 13, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Appellant's earlier work product, Davidson et al. (WO 2010/030341 A1; published Mar. 18, 2010) (“Davidson”), Jones (US 2003/0195696 A1; published Oct. 16, 2003), and Sheha et al. (US 2005/0073443 A1; published April 7, 2005) (“Sheha”). Final Act. 20–32.

(3) Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Davidson, Jones, Sheha, and Hitchner (US 6,128,543; issued Oct. 3, 2000). Final Act. 32–33.

DISCUSSION

35 U.S.C. § 101: Claims 1–9, 11–13, and 27

To determine whether subject matter is patent-eligible under § 101, the Supreme Court has set forth a two part test “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* For computer-related technologies, “the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the *specific asserted improvement* in computer capabilities” (which would be eligible subject matter) or instead “on a process that qualifies as an ‘abstract idea’ for which *computers are invoked merely as a tool*” (which would be ineligible subject matter). *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36, 1338 (Fed. Cir. 2016) (emphasis added). If the claims are directed to eligible subject matter, the inquiry ends. *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017).

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘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). In other words, the second step is to “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.” *Id.* (quoting *Mayo*, 566 U.S. at 72–73). “[W]ell-understood, routine, [and] conventional activit[ies]’ previously known to the industry” are insufficient to transform an abstract idea into patent-eligible subject matter. *Id.* at 2359 (quoting *Mayo*, 566 U.S. at 73).

In rejecting claims 1–9, 11–13, and 27 under 35 U.S.C. § 101, the Examiner determines these claims are directed to an abstract idea of “collecting service data and context data regarding service dynamics of an operator during a delivery activity, analyzing the collected data by identifying, linking, and associating the start and end times of delivery and delay segments, and displaying delay segments that delay delivery segments based on the analysis of the collected data” that are considered as “an ineligible method of organizing human activity” and that are akin or analogous to claims directed to “collecting information, analyzing it, and displaying certain results of the collection and analysis,” which were held to be an “abstract idea” by the Federal Circuit in *Electric Power Group*. Final Act. 8, 17–18 (quoting *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–1356 (Fed. Cir. 2016)). The Examiner also determines steps recited in these claims can be implemented mentally or performed manually by a human with pen and paper. Non-Final Act. 7; *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011).

For instance the service data can be recorded by a human recording the time of the day and the description of all activities of the operator using a pen and pad of paper; [then] [t]he human can then use their mind to analyze the recorded data to identify and link time segments with start and end times that indicate both the delays and the delivery activity; [and] [f]inally, the human can record each delivery and delay with the start and end time on a paper map.

Non-Final Act. 7.

The Examiner further determines the claims fail to amount to “significantly more than the judicial exception” because the elements recited, whether taken individually or in an ordered combination “amount to no more than mere instructions to implement the idea on a computer and a recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the industry.” Non-Final Act. 18.

Alice/Mayo—Step 1 (Abstract Idea)

Turning to the first step of the *Alice* inquiry, Appellant argues the claims are not directed to an abstract idea because:

- (1) “the Examiner does not properly interpret the currently pending claims” and “does not address the recited source of the service data and the corresponding contextual data, which drivers the later functionality of the claim limitations” i.e., “[t]hese data types are generated by a handheld device carried by a delivery vehicle operator” (Appeal Br. 12–14; Reply Br. 3);
- (2) “[t]he Examiner analysis entirely ignores the most obvious distinction between the currently pending claims and those reviewed in *Electric Power Group*, namely, that the currently pending claims recite configurations operable in entirely different field of use than those of *Electric Power Group*, and the configurations of the currently pending claims provide vastly different outputs as compared to the claims of *Electric Power Group*. Whereas the claims of *Electric Power Group* merely provide outputs of otherwise already generated data, the currently pending claims provide configurations that formulate entirely new graphical display formats based on previously non-existent links between various data types” (Appeal Br. 16);

- (3) Appellants' claims, like the claims in *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), recite “features enabling a distinct process that was previously unknown to humans to be automated via a computer system” (Appeal Br. 18) and “focus on an improvement in technology [] specifically operating the realm of computerized tracking of fleet vehicles” (Reply Br. 8); and
- (4) “[t]he *combination* of features recited in the claims provide inherently computer-specific configurations that address shortcomings of previously existing computer systems at least in part via the use of service data and corresponding contextual data *generated by a handheld device carried by a vehicle operator*” and “[t]he recited configurations are specifically tailored for use in a computer environment to enable computing systems to automatically identify the delivery segments and the delay code segments without user intervention based on the generated service data and corresponding contextual data . . . do not simply recite some previously performed manual task that may be selectably performed either manually or via a computer (Appeal Br. 21–22).

Appeal Br. 12–18, 21–22; Reply Br. 2–12.

Appellant’s arguments are not persuasive. First, the Examiner is required to review all claims at some level of generalization and characterize whether those claims are directed to an abstract idea under *Alice* step 1. However, there is no single definition of “abstract idea.” As the Federal Circuit succinctly put it:

The problem with articulating a single, universal definition of “abstract idea” is that it is difficult to fashion a workable definition to be applied to as-yet-unknown cases with as-yet-unknown inventions.

Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288, 1294 (Fed. Cir. 2016). Because there is no single definition of an abstract idea, the

Federal Circuit instructs us “to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.” *Id.* at 1294 (citing *Elec. Power Grp.*, 830 F.3d at 1353–54; accord USPTO Memorandum, *July 2015 Update: Subject Matter Eligibility* (2015), <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf> (“USPTO Memorandum”)) (instructing Examiners that “a claimed concept is not identified as an abstract idea unless it is similar to at least one concept that the courts have identified as an abstract idea”). In this case, the Examiner did just what she was required to do under the USPTO Memorandum, has characterized the claims as required pursuant to *Alice*, and has identified analogous claims as discussed in *Electric Power Group*.

Second, Appellant’s argument against *Electric Power Group* is unpersuasive. The source of service data and corresponding contextual data, i.e., “generated by a handheld device carried by a vehicle operator” is not dispositive as to whether Appellant’s claims are directed to an abstract idea under *Alice* step 1. As correctly recognized by the Examiner, the abstract concept recited in Appellant’s claims (i.e. collecting service data and context data regarding service dynamics of an operator during a delivery activity, analyzing the collected data by identifying, linking, and associating the start and end times of delivery and delay segments, and displaying delay segments that delay delivery segments based on the analysis of the collected data) is similar to “collecting information, analyzing it, and displaying certain results of the collection and analysis,” which was held to be abstract by the Federal Circuit in *Electric Power Group*. Ans. 5. Contrary to Appellant’s argument, the steps recited in Appellant’s claims 1 and 27 are

nothing more than receiving, processing, comparing, and identifying data of a specific content, e.g., service data and corresponding contextual data. Information, as such, is intangible, and data analysis and comparisons, without more, are abstract ideas. *See, e.g., Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 451 fn.12 (2007); *Alice*, 134 S. Ct. at 2355; *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972). “[C]ollecting information, including when limited to particular content (which does not change its character as information),” is “within the realm of abstract ideas.” *Elec. Power Grp.*, 830 F.3d at 1353–54; *see also Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *CyberSource*, 654 F.3d at 1370.

Third, Appellant’s reliance on *McRO* is misplaced. For example, the *McRO* ’576 patent (U.S. Patent No. 6,307,576) describes a computer software for matching audio to a 3D animated mouth movement to provide lip-synced animation. *McRO*’s claims contain (i) specific limitations regarding a set of rules that “define [] a morph weight set stream as a function of phoneme sequence and time of said phoneme sequence” to enable computers to produce “accurate and realistic lip synchronization and facial expressions in animated characters” (*McRO*, 837 F.3d at 1313) and, when viewed as a whole, are directed to (ii) a “technological improvement over the existing, manual 3–D animation techniques” that uses “limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice,” *McRO*, 837 F.3d at 1316.

In contrast to *McRO*, Appellant’s claims and Specification are directed to “systems and methods for capturing and evaluating operational

data in order to improve operational efficiencies in a variety of business contexts.” Spec. 2:12–13. According to Appellant, “a fleet management computer system [is provided] for assessing operational delay.” Spec. 2:15–16. One or more processors included in central server **120** are configured to perform: “[1] receiving service data [and contextual data], the service data being indicative of one or more service dynamics for at least one vehicle operator during one or more time periods; [2] identifying delay code segments based on the service data, each of the delay code segments representing an occurrence indicated by the vehicle operator as delaying a delivery-related activity during a certain period of time; and [3] generating a graphical display indicating the identified delay code segments.” Spec. 3:9–14.

Based on Appellant’s claims and Specification, we determine that the claims are directed to an abstract idea of “assessing operational efficiency” based on input [service and contextual] data, which is considered as a “fundamental economic practice” as well as certain “methods for organizing human activity.” Such activities are squarely within the realm of abstract ideas. Assessing operational efficiency based on input [service and contextual] data is a fundamental business practice prevalent in our system of commerce, like (1) the risk hedging in *Bilski v. Kappos*, 561 U.S. 593 (2010); (2) the intermediated settlement in *Alice*, 134 S. Ct. at 2356–57; (3) verifying credit card transactions in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011); (4) guaranteeing transactions in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014); (5) distributing products over the Internet in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014); (6) determining a price of a

product offered to a purchasing organization in *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306 (Fed. Cir. 2015); and (7) pricing a product for sale in *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015). Assessing operational efficiency based on input [service and contextual] data is also a building block of a market economy and, like risk hedging and intermediated settlement, is an “abstract idea” beyond the scope of § 101. *See Alice*, 134 S. Ct. at 2356.

In addition, we note Appellant’s claims 1 and 7 do not improve the performance of a computer or solve a problem specific to computers or computer networks. Appellant’s Specification and arguments do not demonstrate the claims “improve the way a computer stores and retrieves data in memory,” as the claims in *Enfish* did via a “self-referential table for a computer database.” *See Enfish*, 822 F.3d at 1336, 1339. Neither the steps recited in Appellants’ claims 1 and 17, nor the rest of Appellants’ Specification supply any description or explanation as to how these data processing or analysis steps are intended to provide “a specific improvement to the way computers operate,” as explained in *Enfish*, 822 F.3d at 1336; or an “unconventional technological solution . . . to a technological problem” that “improve[s] the performance of the system itself,” as explained in *Amdocs*, 841 F.3d at 1300, 1302.

As further recognized by the Examiner (Final Act. 3), the steps recited in Appellant’s claims 1 and 27, such as: [1] “receiving service data and corresponding contextual data”; [2] “identifying . . . service data indicative of one or more delivery segment starts and service data indicative of one or more delivery segment ends”; [3] “linking service data indicative of a delivery segment start with service data indicative of a chronologically

adjacent delivery segment end”; [4] “identifying . . . service data indicative of one or more delay code segment starts and service data indicative of one or more delay code segment ends”; [5] “associating one or more respective delay code segments with a subsequent delivery segment delayed by the occurrence of the one or more respective delay code segments”; and [6] “generating a graphical display indicating said respective delay code segments” (*see* claim 27) are also mental steps that could be performed in the human mind or by a human using a pen and paper. *See CyberSource*, 654 F.3d at 1372–73 (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under [section] 101.”); *see also In re Comiskey*, 554 F.3d 967, 979 (Fed. Cir. 2009) (“[M]ental processes—or processes of human thinking—standing alone are not patentable even if they have practical application.”); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (“Phenomena of nature,[] *mental processes*, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.”) (emphasis added).

Additionally, mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

Accordingly, we agree with the Examiner that claims 1 and 27 are directed to an abstract idea. Final Act. 17; Ans. 4.

Alice/Mayo—Step 2 (Inventive Concept)

In the second step of the Alice inquiry, Appellant argues the claims recite elements that amount to “significantly more” [i.e., inventive concept] than the alleged abstract idea” because:

- (1) Appellants’ claims, like the claims in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.* 841 F.3d 1288 (Fed. Cir. 2016), “recite features for providing generated data links between identified delivery segments and identified delay code segments existing within service data generated by a handheld computing device. This enhancement of data stored within databases provides a novel and unique methodology for parsing generated service data received from handheld computing devices to provide enhancements via the generated links between data. Through the recited limitations of the independent claims, the claims provide significantly more detail regarding how enhancements to the data are utilized to solve a computer-specific problem in an unconventional technological way than those claims deemed patentable in *Amdocs*”; and
- (2) Appellants’ claims, like the claims in *DDR Holdings*, are “necessarily rooted in the realm of computer networks” and “provide specific recitations of features that are configured to address and overcome limitations in the methodology that computing systems receive and analyze data to identify delivery segments and delay code segments, and to link delay code segments with corresponding delivery segments to provide an indication of activities that may have delayed delivery related activities occurring during the identified delivery segments.”

Appeal Br. 18–24; Reply Br. 15.

Appellant’s arguments are not persuasive. Under current Federal Circuit precedent, an “inventive concept” under *Alice* step 2 can be established by showing, for example, that the patent claims:

- (1) provide a technical solution to a technical problem unique to the Internet, e.g., a “solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks” (see *DDR*, 773 F.3d at 1257);
- (2) transform the abstract idea into “a particular, practical application of that abstract idea,” e.g., “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user” (see *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1352, 1350 (Fed. Cir. 2016)); or
- (3) “entail[] an unconventional technological solution ([e.g.,] enhancing data in a distributed fashion) to a technological problem ([e.g.,] massive record flows [that] previously required massive databases)” and “improve the performance of the system itself” (see *Amdocs*, 841 F.3d at 1300, 1302).

In this case, however, we find no element or combination of elements recited in Appellant’s claims 1 and 27 that contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. *Alice*, 134 S.Ct. at 2357. For example, Appellant’s abstract idea of “assessing operational efficiency” based on input [service and contextual] data is not rooted in computer technology; nor does it (1) provide any technical solution to a technical problem unique to the Internet as required by *DDR Holdings*; (2) provide any particular practical application as required by *Bascom*; or (3) entail an unconventional technological solution to a technological problem as required by *Amdocs*. Instead, Appellant’s invention simply uses a generic computing device and network, shown, for example, in Figures 1–23, to perform the abstract idea

of “assessing operational efficiency” based on input [service and contextual] data. Spec. 2:14–22; Abstract.

As recognized by the Examiner, the use of generic computer elements (e.g., computer system, memory storage, and processors) do not alone transform an otherwise abstract idea into patent-eligible subject matter. Non-Final Act. 19; Ans. 16–17. As our reviewing court has observed, “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *DDR*, 773 F.3d at 1256 (citing *Alice*, 134 S.Ct. at 2358).

Additional Argument

Appellant argues that the claims “do not preempt the use of any abstract ideas recited.” Appeal Br. 23. However, this argument is not persuasive because, although “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). “Where 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.*

Because Appellant’s claims 1 and 27 are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of claims 1–9, 11–13, and 27 under 35 U.S.C. § 101.

35 U.S.C. § 103: Claims 1–9, 11–13, and 27

In support of the § 103 rejection of independent claim 1, the Examiner finds Appellant’s earlier work product, Davidson, teaches Appellant’s

claimed “fleet management computer system for assessing operational delay code segments” shown in Figure 1, including most claim limitations, except for an express disclosure that (1) “one or more delay code segments representing an occurrence indicated by said vehicle operator as delaying a delivery-related activity” and (2) “[a] graphical display [] comprises a visible indication of a location of one or more of said identified delay code segments.” Non-Final Act. 20–24 (Davidson 1:1–28, 4:8–34, 8:27–9:7, 11:11–13, 13:31–14:9, 16:17–17:6, 17:17–27, 18:29–34, 22:11–32, 23:3–16, Fig. 10).

The Examiner then relies on Jones for teaching (1) “one or more delay code segments representing an occurrence indicated by said vehicle operator as delaying a delivery-related activity” and Sheha for teaching (2) “[a] graphical display [] comprises a visible indication of a location of one or more of said identified delay code segments.” Non-Final Act. 24–25 (citing Jones ¶¶ 70, 147, Fig. 1; Sheha ¶ 138, Fig. 14).

Appellant does not dispute the Examiner’s factual findings regarding Jones and Sheha, or the Examiner’s reason to combine. Instead, Appellant disputes the Examiner’s factual findings regarding Davidson. In particular, Appellant argues Davidson does not teach:

“receiv[ing] service data and corresponding contextual data, said service data being indicative of one or more service dynamics for at least one vehicle operator during one or more time periods, wherein said service data comprises computer-readable data generated by [1] a *handheld device* and indicative of user input received by the *handheld device*, and said contextual data comprises computer-readable data generated by the handheld device concurrently with the service data and indicative of a time the service data was generated.”

Appeal Br. 25–29 (emphasis added). In other words, Appellant acknowledges Davidson teaches the use of “vehicle telematics data” received from vehicle sensors 220, via telematics device (RFID tag) 120, shown in Figure 1, but argues Davidson does not teach or suggest any “service data and corresponding textual data . . . generated by a *handheld device*” as recited in claims 1 and 27. Appellant further argues Davidson’s “vehicle telematics data” is not the same as “service data” and the Examiner has improperly conflated “the concepts of telematics data and service data by indicating that Davidson’s discussion regarding telematics data is somehow analogous to the recited features of receiving and utilizing service data of independent claim 1.” Appeal Br. 28.

Appellant also contends that because Davidson does not teach any “service data,” Davidson also does not teach or suggest any “*linking service data indicative of a delivery segment start with service data indicative of a chronologically adjacent delivery segment end*” or “*linking service data indicative of a delay code segment start with service data indicative of a chronologically adjacent delay code segment end*” as recited in Appellant’s claims 1 and 27. Appeal Br. 30–31.

Appellant’s arguments are not persuasive. Instead, we find the Examiner has provided a comprehensive response to Appellant’s arguments supported by a preponderance of the evidence. Ans. 18–19. As such, we adopt the Examiner’s findings and explanations provided therein. *Id.* For example, as correctly recognized by the Examiner, “the distinction between service data and telematics data” is not recited in the claims. Ans. 18. Likewise, Davidson’s telematics device can also be a handheld device used

to capture telematics data and service data from sensors. Ans. 19 (citing Davidson 177–23, 27:23–34).

For example, Davidson’s Figure 1 is identical to Appellant’s Figure 2, as reproduced below.

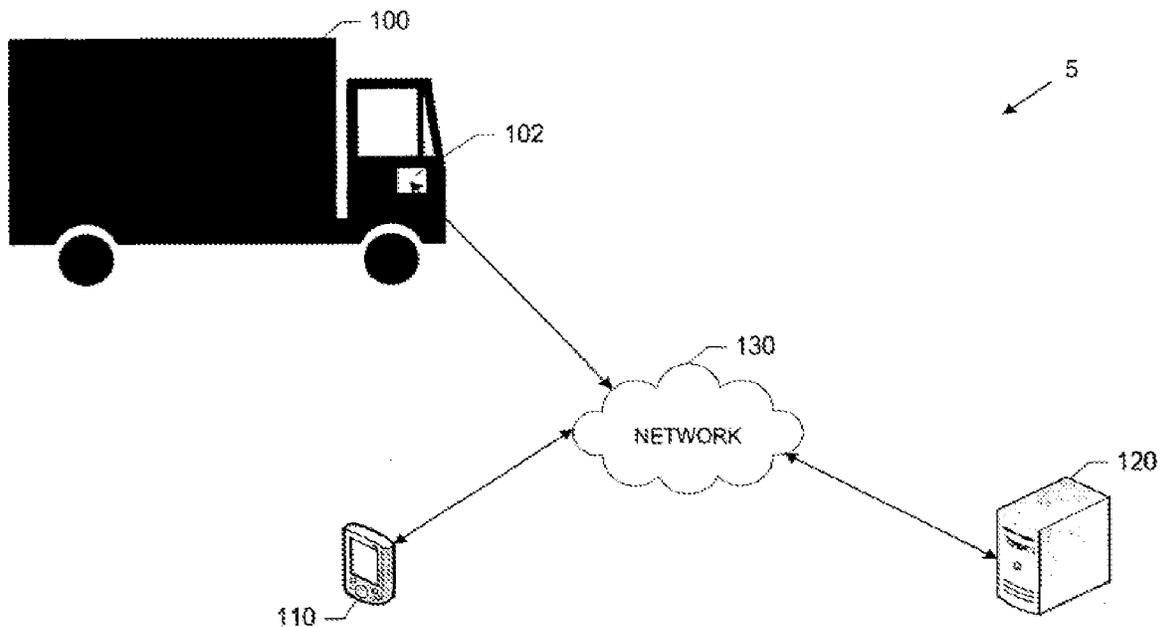


FIG. 1

Davidson’s Figure 1 shows fleet management computer system for evaluating various operational efficiencies based on operational data including (1) “telematics data” received from telematics device **102** and (2) “service data” received from handheld device **110**.

As shown in Figure 1, Davidson teaches (1) the use of telematics device **102** to receive telematics data from a plurality of vehicle sensors located on vehicle **100** (Davidson 3:24–25, 4:1–7, Abstract) and (2) the use of handheld device **110** to receive input service data (Davidson 8:12–24). Davidson also teaches that, in addition to receiving telematics data from telematics device **102**, handheld device (i.e., portable data acquisition

device) **110** may also be configured to collect and transmit telematics data on its own as well as service data including location information from a Global Positioning System (GPS) device. Davidson 8:1–11.

For these reasons, we are not persuaded of Examiner error. Accordingly, we sustain the Examiner’s obviousness rejection of claims 1 and 27 and dependent claims 2–9 and 11–13, which Appellant does not argue separately.

CONCLUSION

On the record before us, we conclude Appellant has not demonstrated the Examiner erred in rejecting claims 1–9, 11–13, and 27 under 35 U.S.C. § 101 and § 103.

DECISION

As such, we AFFIRM the Examiner’s rejection of claims 1–9, 11–13, and 27 under 35 U.S.C. § 101 and § 103.

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)(iv).

AFFIRMED