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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RONALD MRAZ and GABRIEL SILBERMAN<sup>1</sup>

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Appeal 2018-001066  
Application 13/748,147  
Technology Center 2400

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Before MICHAEL J. STRAUSS, AMBER L. HAGY, and  
MICHAEL J. ENGLE, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.<sup>2</sup>

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<sup>1</sup> According to Appellants, the real party in interest is Owl Cyber Defense Solutions, LLC. *See* App. Br. 2.

<sup>2</sup> We refer to the Specification, filed Jan. 23, 2013 (“Spec.”); the Final Office Action, mailed Mar. 7, 2017 (“Final Act.”); Appeal Brief, filed June 27, 2017 (“App. Br.”); the Examiner’s Answer, mailed Oct. 27, 2017 (“Ans.”); and the Reply Brief filed Nov. 9, 2017 (“Reply Br.”).

## THE INVENTION

The claims are directed to the capture and securing of dynamically selected digital information. Spec., Title. Claims 1 and 9, reproduced below, are illustrative of the claimed subject matter:

1. A system for monitoring a channel passing information, the information including an identifying designation, comprising:

a channel monitor having an input coupled to an information channel and an output, the channel monitor configured to provide on the output all information passing on the information channel, the information including an identifying designation;

a manifest engine having a first input coupled to the output of the channel monitor to receive the information passing on the information channel, a second input configured to receive an information manifest table and an output, the information manifest table having at least one identifying designation, the manifest engine configured to compare information received on the first input with the at least one identifying designation in the information manifest table and to provide on the output only that information having an identifying designation that matches an identifying designation included within the information manifest table; and

a storage server coupled to the output of the manifest engine and configured to receive and store information provided on the output of the manifest engine.

9. A method for monitoring a channel passing information, the information including an identifying designation, comprising the steps of:

monitoring an information channel with a channel monitor coupled to the information channel and providing on an output of the channel monitor all information passing on the information channel, the information including an identifying designation;

receiving, from the output of the channel monitor and at a manifest engine, all information passing on the information channel;

receiving, at the manifest engine, an information manifest table having at least one identifying designation;

comparing, in the manifest engine, the received information with the at least one identifying designation in the information manifest table and identifying only that portion of the information having an identifying designation that matches an identifying designation included within the information manifest table; and

outputting the identified information from the manifest engine to a storage sever for storage thereon.

### REFERENCES

The following prior art is relied upon by the Examiner in rejecting the claims on appeal:

Zhang	US 2010/0246549 A1	Sept. 30, 2010
Mraz	US 8,352,450 B1	Jan. 8, 2013

### REJECTIONS

The Examiner made the following rejections:

Claims 1–14 stand rejected under 35 U.S.C. § 101 as being directed to a judicial exception to patent eligibility. Final Act. 2–4.

Claims 9, 10, and 12 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Zhang and Mraz. Final Act. 4–6.

### ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner has erred in rejecting claims 1–14 under 35 U.S.C. § 101 and claims 9, 10, and 12 under 35 U.S.C. § 103(a). We agree with Appellants as to both of these rejections of the claims.

35 U.S.C. § 101

To determine patentable subject matter under 35 U.S.C. § 101, the Supreme Court has set forth a two part test. “First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts” of “laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). A court must be cognizant, however, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012). Thus, “describing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Instead, “the claims are considered in their entirety to ascertain 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).

In the second step, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). The Supreme Court has “described step two of this analysis as a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself.” *Id.* (quotation omitted).

Here, the Examiner determines the claims are “directed towards an abstract idea of using categories to organize, store, and transmit

information.” Final Act. 3. However, such a high level of abstraction oversimplifies the claims and fails to consider the actual claim limitations, including the storage of only that information passing on the channel that has a particular identifying designation. *See* App. Br. 6. Appellants disclose, “the . . . invention relates to the use of manifest tables and one-way, hardware-enforced information transfers, to select the information to be captured and secured.” Spec. ¶ 1. In particular, according to the Specification, one problem of the prior art is that, although it is preferable to use one-way data links to enhance system security, some communication protocols require a return message path, i.e., bilateral communication, for error detection. Spec. ¶ 10. According to Appellants, “[i]t is an object of the present invention to provide a secure method for the selective capture of information flowing on a shared channel and securing it to comply with legal and regulatory requirements or security and operational guidelines, while ignoring all other information on the shared channel.” Spec. ¶ 11. This is accomplished by providing a channel monitor and manifest engine according to claim 1. Spec. ¶ 12. That is, the invention is directed to solving a technological problem in communications systems. In contrast, the Examiner provides insufficient evidence or reasoning in support of a determination that claim 1 is directed to an abstract idea. Accordingly, step 1 of the *Alice/Mayo* framework is not satisfied, thereby rendering the rejection improper.

Furthermore, even had the Examiner properly determined the claims to be directed to an abstract idea, the rejection would still be improper for the reasons argued by Appellants under step 2, i.e., because “[t]he Examiner has not made any showing that the channel monitor [of claim 1] is a generic

computer function and/or how a generic computer could be programmed to perform this purported generic computer function.” App. Br. 7; Reply Br. 3–4. That is, the Examiner fails to sufficiently explain why the requirement for a “channel monitor having an input coupled to an information channel and an output, the channel monitor configured to provide on the output all information passing on the information channel, the information including an identifying designation” is not significantly more than the broad abstract idea set forth by the Examiner (“using categories to organize, store, and transmit information”). Final Act. 3. Even if we were to narrow the formulation of the abstract idea, there are insufficient findings of fact in the record before us to determine whether limitations such as the structure and functionality provided by the channel monitor or manifest engine would have been well-understood, conventional, and routine. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (“Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.”).

Accordingly, we do not sustain the Examiner’s rejection of claims 1–14 under 35 U.S.C. § 101.

35 U.S.C. § 103(a)

Appellants contend the rejection is improper because Zhang fails to disclose a channel monitor. App. Br. 13. The Examiner responds by relying on and quoting language from Zhang. Final Act. 8–9; Ans. 5–6. However, as Appellants have repeatedly argued, the quoted language is found nowhere in the applied Zhang reference and, instead, is found in a completely different reference, i.e., U.S. Patent Publication No. 2010/0332965 A1 to Carraher et al. (“Carraher”), which has not been applied by the Examiner.

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App. Br. 13–14; Reply Br. 5. Thus, as the Examiner has not applied the Carraher reference in rejecting claims 9, 10, and 12 under 35 U.S.C. § 103(a), and has not otherwise explained why the combination of the applied Zhang and Mraz references teaches or suggests the disputed channel monitor, we do not sustain the rejection.

#### DECISION

We reverse the Examiner’s decision to reject claims 1–14 under 35 U.S.C. § 101.

We reverse the Examiner’s decision to reject claims 9, 10, and 12 under 35 U.S.C. § 103(a).

REVERSED