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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 14/316,297 | 06/26/2014 | Don Buckner | 0121826 | 3419 |

73325 7590 08/31/2018

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|---|---|
| CHEN, CAI Y | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2425 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 08/31/2018 | ELECTRONIC |

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DON BUCKNER

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Appeal 2018-001331
Application 14/316,297
Technology Center 2400

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Before ALLEN R. MacDONALD, JEAN R. HOMERE, and
JON M. JURGOVAN, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, and 5–7,[1] constituting the only claims pending in this application. App. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.[2]

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[1] Claims 3, 4, and 8–20 were cancelled and thus will not be reviewed in this decision.

[2] Our Decision refers to the Specification ("Spec.") filed June 26, 2014, the Final Office Action ("Final Act.") mailed November 25, 2016, the Appeal Brief ("App. Br.") filed June 28, 2017, the Examiner's Answer ("Ans.") mailed September 21, 2017, and the Reply Brief ("Reply Br.") filed November 20, 2017.

## CLAIMED INVENTION

The claims are directed to an interactive television program where users pay to vote on performances of contestants, and money collected is disbursed to a selected contestant as a prize. Spec. Abstract, Fig. 4. Claim 1, which is representative of the claimed invention, is reproduced below:

> 1. A method for an interactive television program, the method comprising:
>
> providing a viewer application to a viewer for installation on a remote device;
>
> transmitting performances of a plurality of contestants to a television broadcast station, the television broadcast station comprising a microprocessor and a memory that stores voting preferences of a viewer;
>
> filtering the performances by comparing the performances to the voting preferences of the viewer;
>
> formatting the performances;
>
> broadcasting only the filtered performances using the television broadcast station to the remote device of the viewer to subsequently selectively vote for a selected contestant of the plurality of contestants in response to viewing the formatted performances on the remote device;
>
> receiving results of votes made by the viewer for the selected contestant through the remote device, an Internet, social media, mobile devices, or any combination thereof;
>
> broadcasting results of the voting using the television broadcast station;
>
> collecting money from a viewer for each of the votes; and
>
> disbursing the money to the selected contestant as a prize for participating;

> wherein the broadcasting of the formatted performances to the remote device of the viewer causes the formatted performance to display on the remote device and to enable a connection to the television broadcast station using the remote device to vote.

App. Br. 9–10 Claims App'x.

## REJECTION

Claims 1, 2, and 5–7 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 2–3.

## ANALYSIS

### *§ 101 Rejection*

Patent eligibility is a question of law that is reviewable *de novo*. *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012).

Patentable subject matter is defined by 35 U.S.C. § 101, as follows:

> 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.

In interpreting this statute, the Supreme Court emphasizes that patent protection should not preempt "the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). The rationale is that patents directed to basic building blocks of technology, as opposed to integrating those building blocks into something more, would not "promote the progress of science" under the U.S. Constitution, Article I, Section 8, Clause 8, but instead would impede it. *See Alice*, 134 S. Ct. at 2354–55.

Accordingly, laws of nature, natural phenomena, and abstract ideas, are not patent-eligible subject matter. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017) (citing *Alice*, 134 S. Ct. at 2354).

The Supreme Court set forth a two-part test for subject matter eligibility in *Alice*. 134 S. Ct. at 2355. The first step is to determine whether the claim is directed to a patent-ineligible concept. *Id.* (citing *Mayo*, 566 U.S. at 76–77). If so, then the eligibility analysis proceeds to the second step of the *Alice/Mayo* test in which we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). The "inventive concept" may be embodied in one or more of the individual claim limitations or in the ordered combination of the limitations. *Alice*, 134 S. Ct. at 2355. The "inventive concept" must be significantly more than the abstract idea itself, and cannot be simply an instruction to implement or apply the abstract idea on a computer. *Alice*, 134 S. Ct. at 2358. "'[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. *Alice*, 134 S. Ct. at 2359 (citing *Mayo*, 566 U.S. at 73).

Turning to the present case, the claims recite methods and thus ostensibly fall within the statutory categories of "process" under 35 U.S.C. § 101. However, this is not the end of the inquiry, as we must proceed to apply the *Alice/Mayo* test to determine whether the claims are patent eligible.

In the first step of the *Alice/Mayo* test, the Examiner determined "[c]laim(s) 1 is/are directed to the abstract idea of organizing the human

activity of processing of voting [on] performance and the collection of individual user's pledged money." Final Act. 2. The Examiner also finds claim 1 is directed to "the fundamental economic practice for an interactive television platform to generate an economic means for a plurality of contestant[s]." Final Act. 3. The Examiner further states the abstract idea is "organizing human activity for an interactive television platform to manage a reality show for a plurality of contestant[s]." Ans. 2. The Supreme Court has indicated that a "fundamental economic practice" and "organizing human activity" are abstract ideas. *Alice*, 134 S. Ct. at 2356–57 (explaining *Bilski v. Kappos*, 561 U.S. 593 (2010) ("*Bilski*")).

We agree with the Examiner that claim 1 is directed to an abstract idea of "organizing [the] human activit[ies]" by voting on performances and collecting prize money for disbursement to a selected contestant. We also determine claim 1 is directed to an abstract idea that is a "fundamental economic practice" by collecting and distributing money to a selected contestant. As will become clear, the claim recites other abstract ideas as well. Claims 2 and 5–7 incorporate these abstract ideas by virtue of their dependency from claim 1.

In analyzing whether an idea is abstract, our reviewing court has held that

> the decisional mechanism courts now apply is 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. [This] is the classic common law methodology for creating law when a single governing definitional context is not available.

*Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citation omitted).

The relevant case law establishes the present claims are directed to an abstract idea. For example, *Voter Verified, Inc. v. Election Systems & Software LLC*, 887 F.3d 1376 (Fed. Cir. 2018), involved claims directed to voting, verifying the vote, and submitting the vote for tabulation, human activity the court found to be directed to abstract ideas. *Id.* at 1385. Likewise, the claims in this case involve the human activity of voting and tabulating votes to select a contestant to receive prize money.

*In re Smith*, 815 F.3d 816 (Fed. Cir. 2016) ("*Smith*"), found rules for conducting a wagering game directed to a "fundamental economic practice" because it involves exchanging and resolving financial obligations similar to *Alice* and *Bilski*. *Smith*, 815 F.3d at 818–19. The claims in the present case are likewise directed to a kind of game in which contestants provide performances and money is collected and distributed to a selected contestant on the basis of votes received. The collection and distribution of money involves exchanging and resolving financial obligations, amounting to a "fundamental economic practice."

*Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253 (Fed. Cir. 2016), involved claims directed to the abstract idea of out-of-region access to regional broadcast content. *Id.* at 1258. Similarly, the claims in this case involve transmitting and broadcasting content, namely, the performances that are viewed and voted upon by viewers, as well as the voting results that are broadcast along with performances.

*Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) ("*Electric Power*"), involved claims directed to the abstract idea of "gathering and analyzing information of a specified content, then displaying

the results." *Id.* at 1354. Similarly, the claims at issue here involve gathering and analyzing information (votes) for broadcast display.

*Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329 (Fed. Cir. 2017), involved claims directed to the abstract idea of sending and monitoring the delivery of audio/visual information. This bears similarity to this case involving transmission and broadcasting of information (performances), and monitoring information (votes and money received for distribution to the selected contestant as a prize).

*Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014) ("*Ultramercial*"), involved claims directed to the abstract idea of showing an advertisement before delivering free content. *Id.* at 715. Distribution of content in *Ultramercial* is similar to transmitting and broadcasting performances in the claimed invention.

*Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307 (Fed. Cir. 2016), was directed to the abstract idea of filtering email. Similarly, *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), involved claims directed to abstract idea of filtering content on the Internet. The claimed invention recites filtering the performances by comparison to a viewer's voting preferences, and thus bears similarity to the filtering claims found abstract in these cases.

Many cases from our reviewing court have found formatting and displaying information to be directed to an abstract idea. *See Electric Power*, 830 F.3d at 1354–55 (collecting, analyzing, and displaying information, without more, is an abstract idea); *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335 (Fed. Cir. 2018) (claims determined to be directed to the abstract idea of non-interfering display of two information sets);

*Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332 (Fed. Cir. 2017) (claims recited abstract idea of creating a "dynamic document" using content from multiple electronic records). Thus, the claimed formatting and displaying/viewing of performances is likewise directed to an abstract idea.

We also note that the abstract ideas of voting on performances and collecting and distributing money can be performed in the human mind, or by a human using pen and paper. Courts have found such subject matter to be directed to abstract ideas. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011).

From these precedents, after comparing the facts of these cases with the present one, we conclude the independent claims in this case are solidly on the side of reciting abstract ideas.

Turning to step two of *Alice/Mayo*, we now consider whether the independent claims recite an "inventive concept" sufficient to transform the abstract ideas into patentable subject matter.

Reviewing the claims, one candidate for an "inventive concept" is that the television broadcast station broadcasts filtered performances to a remote device that enables voting. However, the claims do not recite particularities of how voting is enabled, so we find this insufficient to establish an inventive concept. The "wherein" clause at the end of claim 1 recites formatting of performance to display on the remote device and enabling of a connection, which may be what makes voting possible, but beyond this general statement, no particularities are set forth in the claim to explain how the desired result of voting is accomplished. The claims, therefore, recite

"desired results (functions) and [not] particular ways of achieving (performing) them." *Electric Power*, 830 F.3d at 1356.

Another possibility for an "inventive concept" recited in the claims is the receiving of votes through a variety of media, and broadcasting those results using the television broadcast station. However, the claim does not recite particulars of how votes on a variety of media are received, or what media the television broadcast station uses to broadcast votes. Once again, the claims recite a desired result rather than a particular way of achieving it.

Another possibility for an "inventive concept" recited in the claims is the collecting of money from viewers for votes, and disbursing that money to a selected contestant. In this vein, we note that social media such as YouTube and FaceBook have tracked "likes" (votes) for performances for many years. *See* https://smallbusiness.chron.com/liking-youtube-videos-works-67700.html (last viewed 8/24/2018). Here again, however, the particulars of how money is collected and disbursed are missing from the claims. Accordingly, we find no "inventive concept" connected to the collection and disbursement.

We also note that additional elements such as the "remote device," "microprocessor," "memory," "television broadcast station," "mobile devices," and "connection" are recited generically and impart no "inventive concept" to the claims. A "generic computer implementation" is insufficient to transform a patent-ineligible abstract idea into a patent-eligible invention. *Alice*, 134 S. Ct. at 2357. As in *Alice*, several of the claimed steps here do "no more than require a generic computer to perform generic computer functions." *Id.* at 2359.

*Affinity* involved claims with aspects similar to those at issue here. The claims recited remote delivery of regional broadcasting using "conventional components and functions generic to cellular telephones," which were held insufficient to transform the abstract idea into patent-eligible subject matter. *Affinity*, 838 F.3d at 1263. Numerous other precedents are relevant to the facts of this case, including *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363 (Fed. Cir. 2015) (claims involving processor determined ineligible); *Content Extraction and Transmission LLC v. Wells Fargo Bank, National Ass'n*, 776 F.3d 1343 (Fed. Cir. 2014) (claims reciting memory determined ineligible); *Electric Power*, 830 F.3d 1350 (claims reciting generic computer components and display devices found ineligible).

Many of the recited steps lack even a generic component to perform them, and require no physical elements at all. These steps include "providing a viewer application," "transmitting performances," "filtering the performances," "receiving results," and "collecting" and "disbursing the money." Such limitations are viewed insufficient to transform the claims into patent-eligible subject matter. *See Bilski*, 561 U.S. 593; *Parker v. Flook*, 437 U.S. 584 (1978); *Gottschalk*, 409 U.S. 63; *Bancorp Services, LLC v. Sun Life Assur. Co. of Canada (US)*, 687 F.3d 1266 (Fed. Cir. 2012).

Reviewing the dependent claims, we likewise find nothing transformative. Claim 2 recites contestants are at a location remote from the television broadcast station. Where the contestants are located, without more, does not transform the abstract ideas of the claims into a patent-eligible invention.

Claim 5 recites storing a record of final results of votes, but does not recite how or what physical component does this.

Claim 6 recites displaying an amount of votes to viewers as the performance is being broadcast, where the amount of votes determines the amount of money pledged. Again, the particulars of how these steps are performed, and what performs them, are absent from the claim. As such, the claim is directed to a desired result and not a particular way of achieving that result. *Electric Power*, 830 F.3d at 1356.

Claim 7 recites the vote is submitted by the viewer through a web page displayed on the remote device. This limitation is generically recited, and by itself, is insufficient to transform the claim into patent-eligible subject matter in view of other issues with claim 1 from which it depends.

Considering all of the foregoing, and the claims as a whole, we determine the claims in this case are not patent-eligible.

*Appellant's Arguments*

Regarding the first step of *Alice/Mayo*, Appellant contends the Examiner "mischaracterized" and "improperly distill[ed]" the claims into simply "computer components at each step of the management process perform[ing] purely generic computer functions for the purpose of practicing the fundamental of economic practice." App. Br. 4–6 (citing Final Act. 3). Instead, Appellant contends, "the claims are directed to the improvement in the functionality of the overall broadcasting system for transmitting performances to a user by being able to transmit the performances quicker, thereby increasing the broadcasting speed of transmission, and reducing the bandwidth required." *Id.* at 5; Reply Br. 2. Appellant contends "the claimed

system does not simply store, transmit, and organize information, nor does it use rules to identify options." App. Br. 6; Reply Br. 2.

Appellant does not explain what claimed steps make possible quicker transmission of performances quicker, or increase of broadcast speed, or bandwidth reduction, nor is it apparent anything accomplishes these benefits from reading the claims. We find no mention by the Examiner that the claimed system simply stores, transmits or organizes information, or uses rules, nor do we understand why Appellant believes this applies to this case.

Regarding the second step of *Alice/Mayo*, Appellant contends "the recited viewer application, remote device, television broadcast station, including their respective recited functions amount to significantly more than any contended abstract idea by reciting improvements to the technology, as described above." App. Br. 6. As we have explained, the claimed features lack the particularity needed to amount to an "inventive concept" sufficient transform the abstract idea into a patent-eligible invention. The claimed limitations merely set out desired results without a particular way of achieving them. *Electric Power*, 830 F.3d at 1356. The mentioned components are recited generically and fail to define an "inventive concept." *See Alice*, 134 S. Ct. at 2357, 2359.

Appellant contends that

> similar to the analysis above whereby any improvements need not be defined by reference to physical components, but can also be defined by logical structures and processes, the claims recite significantly more because, at least, broadcasting of the formatted performances to the remote device of the viewer causes the formatted performance to display on the remote device and to enable a connection to the television broadcast station using the remote device is not conventional.

App. Br. 6; Reply Br. 2–3. As discussed, lacking the particularities required to recite how these desired results are achieved, the claims do not recite an "inventive concept" to transform the abstract ideas into patentable subject matter. *See Electric Power*, 830 F.3d at 1356.

Appellant further contends:

> Even though some of the limitations when viewed individually may arguably not amount to significantly more than an abstract idea, when looking at the additional limitations as an ordered combination, the invention as a whole amounts to significantly more than a fundamental economic practice. The claimed invention addresses the challenge of providing a broadcast of performances that correlate to the viewer's preferences. This is addressed by storing the viewer's preferences and comparing the preferences to the performances, and broadcasting only those performances to the viewer that correlate to the viewer's preferences. In addition, the broadcast to the remote device of the viewer also establishes a connection between the remote device of the viewer and the television broadcast station. These are meaningful limitations that add more than generally linking the use of the abstract idea (the general concept of organizing and comparing data) to the Internet, because they solve an Internet-centric problem with a claimed solution that is necessarily rooted in computer technology, similar to the additional elements in DDR Holdings. These limitations, when taken as an ordered combination, provide unconventional steps that confine the abstract idea to a particular useful application.

App. Br. 6–7; *see also* Reply Br. 3. Broadcasting performances related to a viewer's preferences is something YouTube has done for years as recommendations based on what users watched or liked. https://support.google.com/youtube/ answer/6342839?hl=en (last viewed 8/24/2018). To the extent YouTube's servers could be viewed as a "television broadcast station" YouTube also enables a user to establish a

connection to those servers by viewing or liking performance videos. The claims are lacking details to describe a particular way of filtering performance by viewer preferences, or how, specifically, the broadcast to the viewer also establishes a connection between the remote device of the viewer and the television broadcast station. As such, the claims are merely confining the abstract ideas to a particular technological environment, which is insufficient to transform the claims to a patent-eligible invention. *Alice*, 134 S. Ct. at 2358; *Bilski*, 561 U.S. at 612. The claims merely set forth desired results but not particular ways of achieving them. *Electric Power*, 830 F.3d at 1356.

## DECISION

We affirm the Examiner's rejections of claims 1, 2, and 5–7 under 35 U.S.C. § 101.

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