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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAWAN KUMAR, MARK ALLEN NELSEN, and TODD McGREGOR

Appeal 2018-001430
Application 14/216,843[1]
Technology Center 3600

Before ERIC S. FRAHM, SCOTT E. BAIN, and MICHAEL T. CYGAN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, 4, 5, 7–9, 11, 12, 14–17, and 22–25, which constitute all claims pending in the application. Claims 3, 6, 10, 13, and 18–21 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify Visa International Service Association as the real party in interest. App. Br. 3.

BACKGROUND

The Claimed Invention

The invention relates to fraud detection and notification for financial accounts, such as credit card accounts. Spec. ¶¶ 2–3. Specifically, the invention alerts issuers and account holders of potentially fraudulent transactions along with a set of additional transactions that may not have been identified as fraudulent but provide, for example, further context for the alert. *Id.*

Claims 1, 8, and 15 are independent. Claim 1 is illustrative of the invention and the subject matter in dispute, and reads as follows:

> 1. A method comprising:
>
> *receiving*, by a server computer, transaction *data* for a transaction associated with a payment account of a user in an authorization request message from an access device;
>
> *determining*, by the server computer, that the transaction is *potentially fraudulent* in view of a set of prior transactions not previously identified as potentially fraudulent;
>
> in response to determining that the transaction in potentially fraudulent, *generating*, by the server computer, an alert notification *message* after receiving the authorization request message;
>
> in response to determining that the transaction in potentially fraudulent, *initiating*, by the server computer, *sending* the alert notification *message* including information about a plurality of transactions comprising the transaction and the set of prior transactions not previously identified as potentially fraudulent to a mobile device operated by a user associated with the payment account, none of the set of prior transactions having been sent to the mobile device utilizing an alert notification message;
>
> *receiving* a *response* indicating that a subset of transactions in the plurality of transactions comprising the

> transaction and the set of prior transactions not previously identified as potentially fraudulent have been rejected by the user, the subset of transactions indicated as rejected by the user including at least two transactions; and
>
> *determining*, based on the received response, that the subset of transactions in the plurality of transactions are *unauthorized transactions*.

App. Br. 20 (Claims Appendix) (emphases added).

The Rejection on Appeal

Claims 1, 2, 4, 5, 7–9, 11, 12, 14–17, and 22–25 are rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 9–15.

DISCUSSION

We have reviewed the Examiner's rejection in light of Appellants' arguments presented in this appeal. Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). On the record before us, Appellants have not persuaded us of error.

Rejection Under 35 U.S.C. § 101

The Examiner determined that the claims are directed to determining "risk of fraud," which is a fundamental economic practice and, accordingly, constitutes an abstract idea. Final Act. 9–11; Ans. 4; *Alice Corp. v. CLS Bank lnt'l*, 573 U.S. 208, 217 (2014) (describing two-step framework "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts"). Further, the Examiner found that additional elements in the claims merely constituted conventional steps performed on a generic

computer, and therefore did not include additional elements sufficient to amount to significantly more than the abstract idea. Final Act. 13–14. Accordingly, the Examiner concluded that the claims constitute ineligible subject matter.

Appellants argue that the "anti-fraud protocol" recited in the claims is not an abstract idea. App. Br. 13–14; Reply Br. 2–4. Appellants further argue that even if the claims recite an abstract idea, they include "significantly more," namely, "multiple interrelated technical operations" that make the claims patent-eligible subject matter. App. Br. 14–18 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014); *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)).

After the Briefs were filed and Answer mailed in this case, the USPTO published "Revised Subject Matter Eligibility Guidance" synthesizing case law and providing agency instruction on the application of § 101. *See* USPTO's January 7, 2019, *2019 Revised Patent Subject Matter Eligibility Guidance* 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under the Guidance, we must look to whether a 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) ("Step 2A, Prong One"); and
> (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) ("Step 2A, Prong Two").

See 84 Fed. Reg. at 54–55.

Only if a claim recites a judicial exception, and 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 is 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 id. at 56 (collectively "Step 2B").

We begin our *de novo* review with Step 2A, Prong One of the Guidance, as applied to Appellants' claim 1.[2] We observe that claim 1 recites "a method" comprising the following steps: (1) "receiving" transaction "data;" (2) "determining" that a transaction is potentially fraudulent; (3) "generating" an alert message; (4) "sending" the alert message; (5) "receiving" a response (data); and (6) "determining" that a subset of transactions are fraudulent. App. Br. 19–20. We agree with the Examiner's determination that the foregoing steps merely describe fraud detection (*e.g.*, credit card fraud detection), which is an abstract idea. Steps (1) and (5) recite data retrieval associated with user transactions, including transactions rejected by the user. Steps (2) and (6) recite data processing according to rules for determining fraudulent (or potentially fraudulent) transactions. Steps (3) and (4) recite generating and sending an alert

[2] The Guidance refers to "Step One" as determining whether the claimed subject matter falls within the four statutory categories identified by 35 U.S.C. § 101: process, machine, manufacture, or composition of matter. This step is not at issue in this case.

message based on the foregoing. Accordingly, read as a whole, the recited steps describe a fraud detection system (or "protocol," as Appellants describe it), which is a fundamental economic practice.

Accordingly, we determine that, like the claims to hedging in *Bilski* and the claims to mitigating settlement risk in *Alice*, claim 1 recites a fundamental economic practice, which is one of the certain methods of organizing human activity deemed to be an abstract idea under the Guidance. *See Bilski v. Kappos*, 561 U.S. 593 (2010); *Alice*, 573 U.S. 208.

We next proceed to Step 2A, Prong 2 of the Guidance. Under this step, if the claim "as a whole" integrates the abstract idea into a "practical application," it is patent eligible. Appellants argue that claim 1 recites "multiple interrelated technical operations" which integrate the abstract idea into a practical application. App. Br. 16. Appellants argue claim 1 is similar to the claims held patent-eligible in *DDR* and *Bascom* (*see supra*). Reply Br. 5–7.

Improving the functioning of a computer can reflect integration of an idea into a "practical application." Guidance Sect. III. Appellants, however, do not explain, and we do not discern, any improvement in technology from the claimed invention. *Compare Bascom*, 827 F.3d at 1350 ("harness[ing a] technical feature of network technology in a filtering system" to customize content filtering); *DDR*, 773 F.3d at 1258 (Fed. Cir. 2014) ("the claims at issue here specify *how* interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.") (emphasis added). The claims in *Bascom* and *DDR*, for example, were "necessarily rooted in computer technology in order to overcome a problem

specifically arising in the realm of computer networks," *see, e.g.*, *DDR*, 773 F.3d at 1257, but Appellant's claim 1 recites a fraud detection protocol that merely uses generic computing elements. *See e.g.*, Spec. ¶¶ 23–26 (describing generic computing and communications elements, such as "cellular phones, PDAs, personal computers," an "access device," a "merchant computer," and a "payment processing network").

Appellants also do not direct us to any evidence that claim 1 recites any unconventional rules, transforms or reduces an element to a different state or thing, or otherwise integrates the idea into a practical application. Rather, claim 1 recites detecting fraudulent transactions by "alert[ing]" the user of certain transactions according to rules (not recited in claim 1), and analyzing the user's response. App. Br. 20 (Claims App'x.). Reciting a result-oriented solution that lacks any details as to how the computer performed the modifications is the equivalent of the words "apply it." *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341–42 (Fed. Cir. 2015) (*citing Elec. Power Grp., LLC, v. Alstrom S.A.*, 830 F.3d 1350, 1356 (Fed. Cir. 2016) (cautioning against claims "so result focused, so functional, as to effectively cover any solution to an identified problem")); *see also CyberSource v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (mere data gathering does not make a claim patent-eligible). The data gathering and processing steps in claim 1 do not add meaningfully to the recited fundamental economic practice.

Finally, under Step 2B of the Guidance, we must look to whether the claims include any "additional limitation that is not well-understood, routine [or] conventional." The "question of whether a claim element or combination of elements is well-understood, routine and conventional to a

skilled artisan in the relevant field is a question of fact." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018); *see also Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d. 1314, 1325 (Fed. Cir. 2016) (holding that patent eligibility inquiry may contain underlying issues of fact).

Claim 1 recites a fraud detection method that includes receiving, analyzing, and transmitting data or messages. *See supra.* We agree with the Examiner's finding that simply using standard computer elements to implement rules for facilitating data processing and analysis (and specifically, a fraud detection protocol) is well understood, routine, and conventional. Ans. 4–7; *OIP Techs., Inc., v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (sending messages over a network, and storing and retrieving information in memory is well-understood, routine, conventional activity); *CyberSource*, 654 F.3d at 1372–73, 1375 (use of computer to perform otherwise ineligible steps for determining fraudulent transactions did not impart eligibility); Spec. ¶¶ 2–3 (acknowledging that transaction alerts to mobile phones are known and conventional). Although Appellants assert that the claims constitute a "technical solution" and "specify how interactions with the Internet are manipulated to yield a desired result," Reply Br. 4–5, Appellants do not identify any unconventional elements, and we discern none. *See supra.* As the Examiner finds, claim 1 recites "receiving and comparing data to make a determination regarding fraud and providing an alert." Ans. 5; Spec. ¶¶ 23–26.

Accordingly, we conclude that the Examiner did not err in concluding that claim 1 constitutes ineligible subject matter. Appellant does not argue any of the remaining claims separately from claim 1. *See* 37 C.F.R.

§ 41.37(c)(1)(iv). We, therefore, sustain the rejection of claims 1, 2, 4, 5, 7–9, 11, 12, 14–17, and 22–25 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's decision rejecting claims 1, 2, 4, 5, 7–9, 11, 12, 14–17, and 22–25.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED