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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JON L. BENTLEY, ANJUR S. KRISHNAKUMAR,
PARAMESHWARAN KRISHNAN,
NAVJOT SINGH, and SHALINI YAJNIK

Appeal 2018-001686
Application 12/978,739
Technology Center 3600

Before CATHERINE SHIANG, CARL L. SILVERMAN, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) from a final rejection of claims 1–3, 6–13, and 15–23, i.e., all pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as Avaya Inc. App. Br. 2.

STATEMENT OF THE CASE

The Invention

According to the Specification, the invention “relates to e-conferences and more specifically to scheduling an e-conference for participants with partial availability.” Spec. ¶ 1.² The Specification explains that a system “receives a declaration of availability for the e-conference” from one or more participants, and each “declaration contains the partial availability of [each] participant based on time restrictions and topics of interest to the participant.” *Id.* ¶ 30, Abstract. Then, the system “determines a schedule for the e-conference based on the declarations of availability received” and “displays the declarations through [a] user interface to all of the participants in the e-conference.” *Id.* ¶ 30; *see id.* ¶ 8.

Exemplary Claim

Independent claim 1 exemplifies the claims at issue and reads as follows:

1. A method comprising:

generating, by at least one processor, a graphical user interface for an electronic conference, the graphical user interface comprising an indication of which participants are currently connected to the electronic conference and a schedule associated with the electronic conference, the schedule including agenda items to be addressed during the electronic conference in a specific order, wherein ones of the agenda items are mapped to one or more of the participants;

² This decision uses the following abbreviations: “Spec.” for the Specification, filed December 27, 2010; “Final Act.” for the Final Office Action, mailed January 12, 2017; “App. Br.” for the Appeal Brief, filed June 2, 2017; “Ans.” for the Examiner’s Answer, mailed October 3, 2017; and “Reply Br.” for the Reply Brief, filed December 4, 2017.

during the electronic conference, receiving, by the at least one processor, a first declaration indicating partial availability for the electronic conference from a partially available participant of the participants, the first declaration comprising a topic of interest of the partially available participant and a portion of time the partially available participant is available during the electronic conference;

during the electronic conference, scheduling, by the at least one processor, the partially available participant for an agenda item from the agenda items based on a second declaration, from a yielding participant of the participants different from the partially available participant, to yield to a scheduling change, wherein the scheduling change causes an agenda item of the agenda items associated with the topic of interest to be scheduled for presentation within at least part of the portion of time the partially available participant is available;

generating, by the at least one processor and during the electronic conference, an updated schedule for the electronic conference based on the scheduling change;

generating, by the at least one processor, an updated graphical user interface for the electronic conference comprising a presentation of the scheduling change comprising a listing of remaining agenda items from the agenda items and associated participants; and

upon determining, by the at least one processor, that the partially available participant has departed the electronic conference and the topic of interest is coming up for discussion, automatically sending a notification message, by the at least one processor utilizing a network interface, to a communication device associated with the partially available participant.

The Prior Art Supporting the Rejections on Appeal

As evidence of unpatentability under 35 U.S.C. § 103(a), the Examiner relies on the following prior art:

Cragun et al. (“Cragun”)	US 2003/0149606 A1	Aug. 7, 2003
Muller et al. (“Muller”)	US 2005/0125246 A1	June 9, 2005
Bagley et al. (“Bagley”)	US 2007/0100939 A1	May 3, 2007
Hesse	US 2007/0285504 A1	Dec. 13, 2007
Chen et al. (“Chen”)	US 2009/0006161 A1	Jan. 1, 2009
Shuf et al. (“Shuf”)	US 2010/0042649 A1	Feb. 18, 2010
Denner et al. (“Denner”)	US 2011/0072362 A1	Mar. 24, 2011 (filed Sept. 22, 2009)

The Rejections on Appeal

Claims 1–3, 6–13, and 15–23 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 4–6.

Claims 1, 3, 6, 8, 11, 13, 15–18, and 21–23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chen, Hesse, and Muller. Final Act. 7–18.

Claims 2 and 12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chen, Hesse, Muller, and Cragun. Final Act. 18–20.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Chen, Hesse, Muller, and Denner. Final Act. 20–23.

Claims 9 and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chen, Hesse, Muller, and Bagley. Final Act. 23–24.

Claims 10 and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chen, Hesse, Muller, and Shuf. Final Act. 24–25.

ANALYSIS

We have reviewed the rejections in light of Appellants' arguments that the Examiner erred. For the reasons explained below, we agree with the Examiner's conclusion concerning unpatentability under § 103(a) but disagree with the Examiner's conclusion concerning ineligibility under § 101. Except as noted below, we adopt the Examiner's findings and reasoning regarding the § 103(a) rejection in the Final Office Action and Answer. *See* Final Act. 7–25; Ans. 5–8. We provide the following to address and emphasize specific findings and arguments.

The § 101 Rejection of Claims 1–3, 6–13, and 15–23

INTRODUCTION

The Patent Act defines patent-eligible subject matter broadly: “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.” 35 U.S.C. § 101. In *Mayo* and *Alice*, the Supreme Court explained that § 101 “contains an important implicit exception” for laws of nature, natural phenomena, and abstract ideas. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012); *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014); *see Diamond v. Diehr*, 450 U.S. 175, 185 (1981). In *Mayo* and *Alice*, the Court set forth a two-step analytical framework for evaluating patent-eligible subject matter. *Mayo*, 566 U.S. at 77–80; *Alice*, 573 U.S. at 217–18.

Under *Mayo/Alice* step one, we “determine whether the claims at issue are directed to” a judicial exception, i.e., an abstract idea, a law of nature, or a natural phenomenon. *Alice*, 573 U.S. at 217. Step one involves

looking at the “focus” of the claims at issue and their “character as a whole.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018).

In January 2019, the PTO issued revised guidance for determining whether claims are directed to a judicial exception. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Guidance”). The 2019 Guidance applies to the Board. *Id.* at 50–51, 57 n.42; *see* 35 U.S.C. § 3(a)(2)(A) (investing the Director with responsibility “for providing policy direction” for the PTO). Neither the Examiner nor Appellants had the benefit of the 2019 Guidance when advocating their respective positions concerning subject-matter eligibility.

The 2019 Guidance specifies two prongs for the analysis under *Mayo/Alice* step one (PTO step 2A). 84 Fed. Reg. at 54–55. The first prong requires evaluating “whether the claim recites a judicial exception, *i.e.*, an abstract idea, a law of nature, or a natural phenomenon.” *Id.* at 54. “If the claim does not recite a judicial exception, it is not directed to a judicial exception,” and it satisfies § 101. *Id.* “If the claim does recite a judicial exception, then it requires further analysis” under prong two. *Id.* Prong two requires evaluating “whether the claim as a whole integrates the recited judicial exception into a practical application of the exception.” *Id.* “When the exception is so integrated, then the claim is not directed to a judicial exception,” and it satisfies § 101. *Id.* “If the additional elements do not integrate the exception into a practical application, then the claim is directed to the judicial exception,” and it “requires further analysis” under *Mayo/Alice* step two (PTO step 2B). *Id.*

Under *Mayo/Alice* step two, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the

additional elements” add enough to transform the “nature of the claim” into “significantly more” than the judicial exception. *Alice*, 573 U.S. at 217–18, 221–22 (quoting *Mayo*, 566 U.S. at 78–79). Step two involves the search for an “inventive concept.” *Alice*, 573 U.S. at 217–18, 221; *Univ. of Fla. Research Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1366 (Fed. Cir. 2019). “[A]n inventive concept must be evident in the claims.” *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017).

MAYO/ALICE STEP ONE: PTO STEP 2A PRONG ONE

For *Mayo/Alice* step one, the Federal Circuit has noted that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). Here, the Examiner determines that the claims are directed to the abstract idea of “instructing how to schedule events (agenda items) during a conference based on availability.” Ans. 2, 4 (emphasis omitted); *see* Final Act. 5, 26–27. The Examiner identifies the abstract idea as “a method of organizing human activities since it relates to interpersonal/intrapersonal activities” or “an idea of itself since it relates to a concept/plan that can be performed in the human mind or by a human using pen and paper” or both. Final Act. 5.

Appellants dispute that the claims are directed to an abstract idea. *See* App. Br. 9–11; Reply Br. 2–5. Specifically, Appellants assert that the *July 2015 Update: Subject Matter Eligibility* (“2015 Guidance”) identifies “four judicially-created categories that qualify as an ‘abstract idea.’” App. Br. 9; *see* Reply Br. 2. Appellants contend that “[n]otably absent from the four categories is, ‘instructing how to schedule events (agenda items) during a conference based on availability.’” Reply Br. 2. Further, Appellants argue

that the Examiner makes a “piecemeal rejection” and fails to consider the claims as a whole. App. Br. 10; *see* Reply Br. 4.

We disagree. In determining that the claims are directed to an abstract idea, the Examiner accurately assesses the “focus” of the claims and their “character as a whole.” *See* Final Act. 5; Ans. 2–5; *see also* *SAP Am.*, 898 F.3d at 1167. For instance, in making that determination, the Examiner considers the limitations reciting “generating,” “receiving,” and “scheduling.” Final Act. 5.

In addition, we determine that the claims recite abstract ideas falling within the three groupings of abstract ideas specified in the 2019 Guidance: mathematical concepts, certain methods of organizing human activity, and mental processes. *See* 84 Fed. Reg. at 51–52. As relevant here, the Guidance identifies the following as mental processes: “concepts performed in the human mind,” such as “an observation, evaluation, judgment, [or] opinion.” *Id.* at 52 (footnote omitted).

This appeal involves three independent claims, i.e., claims 1, 11, and 16. Each independent claim recites a mental process in its scheduling-a-change limitation and its generating-an-updated-schedule limitation.

The independent claims include similar scheduling-a-change limitations. *See* App. Br. 18, 20, 22 (Claims App.). For example, claim 1’s scheduling-a-change limitation requires:

during the electronic conference, scheduling . . . the partially available participant for an agenda item from the agenda items based on a second declaration, from a yielding participant of the participants different from the partially available participant, to yield to a scheduling change, wherein the scheduling change causes an agenda item of the agenda items associated with the topic of interest to be scheduled for presentation within at least

part of the portion of time the partially available participant is available.

Id. at 18.

The claimed scheduling encompasses an observation or evaluation the human mind may perform. For example, a human meeting coordinator may mentally note a scheduling conflict, obtain information from conference participants to resolve the conflict, and then resolve the conflict by rearranging the agenda. Similarly, the Specification explains that a human moderator may “manually schedule the agenda to meet all of the participant’s [sic] needs” and “manually schedule the agenda to meet all of the participant’s [sic] availability.” Spec. ¶ 34; *see id.* ¶ 33. The 2019 Guidance identifies an observation or evaluation the human mind may perform as a mental process, and thus an abstract idea. 84 Fed. Reg. at 52.

The independent claims include similar generating-an-updated-schedule limitations. *See* App. Br. 18, 20, 22 (Claims App.). For example, claim 1’s generating-an-updated-schedule limitation requires “generating . . . during the electronic conference, an updated schedule for the electronic conference based on the scheduling change.” *Id.* at 18. The claimed generating encompasses a concept performed by a human mentally or with pen and paper. For example, a human meeting coordinator may generate a revised agenda reflecting rescheduling that occurs during a meeting, e.g., by switching the order of two agenda items. The 2019 Guidance identifies a concept performed by a human mentally or with pen and paper as a mental process, and thus an abstract idea. 84 Fed. Reg. at 52 & nn.14–15; *see also Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

MAYO/ALICE STEP ONE: PTO STEP 2A PRONG TWO

Because we determine that each independent claim recites abstract ideas, we consider whether each claim as a whole integrates the recited abstract ideas into a practical application. *See* 84 Fed. Reg. at 54–55. “Only when a claim recites a judicial exception and fails to integrate the exception into a practical application, is the claim ‘directed to’ a judicial exception” *Id.* at 51.

Appellants argue that claims 1, 11, and 16 provide an “improvement to a technical field or technology.” App. Br. 10; Reply Br. 4. Specifically, Appellants assert that the claims recite “a particular solution to a problem (e.g., a specific message sent with specific timing and under other specific circumstances) as opposed to merely claiming the idea of a solution” App. Br. 11. Appellants also assert that the Specification “states a problem of the prior art”:

What is missing from a calendaring system such as this one is the ability for participants to indicate their partial availability.

When participants are not available for the full duration of the e-conference, tracking their availability is difficult, cumbersome and time consuming. When a participant is available only for part of an e-conference, there is no efficient way to schedule the e-conference such that the participant is present for the part of the conference that is pertinent to that participant.

Reply Br. 4 (quoting Spec. ¶¶ 5–6).

Appellants contend that the claims address this problem by “notify[ing] a departed participant of an upcoming event and thereby avoid[ing] the overhead that would be required to schedule and/or remedy a missed agenda event.” *Id.* at 6. Appellants also contend that the Examiner

“omits consideration of” the automatically-sending-notification limitations in claims 1, 11, and 16. App. Br. 9.

We determine that each claim as a whole integrates the recited abstract ideas into a practical application. Each claim does so because the generating-GUI, receiving-declaration, updating-GUI, and automatically-sending-notification limitations in each claim use the recited abstract ideas in a meaningful way beyond generally linking their use to a particular technological environment to provide an improvement to technology. *See* 84 Fed. Reg. at 55. Due to these features and others, the invention permits “more efficient use of participant[] time” and “allow[s] participants to more effectively manage their time” since “it may not be necessary for each participant to be present for the entire duration of the e-conference,” thus providing an improvement to technology. Spec. ¶¶ 34, 37.

Claims 1, 11, and 16 are directed to a particular manner of conducting an electronic conference, scheduling changes in agenda items, and sending notifications. Hence, we conclude that each claim is not directed to a judicial exception and, therefore, satisfies § 101 under *Mayo/Alice* step one. *See Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1362–63 (Fed. Cir. 2018) (deciding that claims “directed to a particular manner of summarizing and presenting information in electronic devices” satisfied § 101 under *Mayo/Alice* step one).

SUMMARY

For the reasons discussed above, we do not sustain the § 101 rejection of claims 1, 11, and 16. For the same reasons, we do not sustain the § 101 rejection of dependent claims 2, 3, 6–10, 12, 13, 15, and 17–23.

*The § 103(a) Rejection of Claims
1, 3, 6, 8, 11, 13, 15–18, and 21–23*

INDEPENDENT CLAIMS 1, 11, AND 16

As noted above, the § 103(a) rejection of claims 1, 11, and 16 rests on Chen, Hesse, and Muller. *See* Final Act. 7–14. Appellants argue that the Examiner erred in rejecting each claim because Hesse does not teach or suggest the following limitation in claim 1 and similar limitations in claims 11 and 16:

upon determining, by the at least one processor, that the partially available participant has departed the electronic conference and the topic of interest is coming up for discussion, automatically sending a notification message, by the at least one processor utilizing a network interface, to a communication device associated with the partially available participant.

See App. Br. 15–16; Reply Br. 6–7.

Specifically, Appellants assert that (1) “Hesse may have a ‘test period’ prior to a conference and a station may malfunction”; (2) “Hesse is aware of the station” malfunctioning; (3) a malfunctioning station cannot “receive messages of any kind”; and therefore (4) sending a notification message to a malfunctioning station “would be nonsensical.” App. Br. 15–16. Appellants also assert that in Hesse “monitoring is absent” and “Hesse remains silent to a ‘departed’ participant.” Reply Br. 6–7; *see* App. Br. 15. According to Appellants, “Hesse does not provide a notification of an upcoming agenda item associated with the departed participant, but instead initiates a rescheduling.” Reply Br. 7 (emphasis omitted).

Appellants’ arguments do not persuade us of Examiner error because they rest on an erroneous claim interpretation and disregard Hesse’s

disclosures regarding monitoring human participants during a conference and notifying human participants during a conference about changes.

The Examiner properly explains that the claims do not require sending a notification message to the device with the graphical user interface that a participant uses for an electronic conference. *See* Ans. 5; *see also* App. Br. 18–22 (Claims App.). Instead, the claims specify “sending a notification message . . . to a communication device associated with the partially available participant.” *See* App. Br. 18–22. As the Examiner reasons, the claims cover “the sending of a notification to any type of communication device associated with a partially available user when it is determined that a user has departed a conference and that the topic of interest is coming up for discussion.” Ans. 5.

Hesse discloses that aspect of the disputed limitations as well as the other aspects of the disputed limitations. In particular, Hesse describes video conference systems that provide “audio and video programming . . . for some or all participants” and monitor “changes in the availability of participants (e.g., human participant or equipment participant).” Hesse ¶¶ 30, 33, 53, 85, 140, 181, 206, [57]; *see id.* Figs. 2, 12, 15, 17; Final Act. 11–12, 28; Ans. 5–6. Hesse explains that a conference-system architecture corresponds to a “plan by which system functions are made the responsibility of particular processes.” Hesse ¶¶ 42, 170. Hesse describes conference-system architectures with (1) monitor-participant-availability processes, (2) reschedule-or-cancel-conference processes, and (3) notify processes. *Id.* ¶¶ 43, 53–54, 73, 140, 143, 171, 181–182, 193, 206, 209; *see id.* Fig. 2 items 216, 220, 222; Fig. 12 items 1222, 1226, 1234; Fig. 15 items 1516, 1520, 1522; Fig. 17 items 1520, 1722, 1726.

A monitor-participant-availability process determines whether a participant (either a human participant or an equipment participant) “becomes unavailable” during a conference and then “posts status.” Hesse ¶¶ 53, 140, 181, 206; *see id.* ¶¶ 51, 85, 179; Final Act. 11–12, 28; Ans. 5–6. A reschedule-or-cancel-conference process “responds to status posted by” a monitor-participant-availability process and may reschedule “during a conference.” Hesse ¶¶ 54, 140, 182, 206; *see id.* ¶¶ 66, 85; Final Act. 11–12, 28; Ans. 5–6. A notify process notifies a human participant about rescheduling “by e-mail, automated telephone system and/or text paging” during “the scheduled conference time.” Hesse ¶¶ 140, 143, 206, 209; *see id.* ¶ 85; Final Act. 11–12; Ans. 6–7. Moreover, a monitor-participant-availability process and a reschedule-or-cancel-conference process “may cooperate to reestablish availability” of a partially available human participant “into an ongoing conference,” i.e., cooperate to reconnect a departed human participant. Hesse ¶ 88 (Table 3 “Status: Reconnecting”); *see id.* ¶ 43, Fig. 2 items 220, 222; Ans. 7–8.

Thus, Hesse discloses (1) monitoring a human participant during a conference, (2) determining whether a human participant has left a conference, (3) reconnecting a human participant who has left a conference, (4) rescheduling during a conference based on ability to participate, and (5) notifying a human participant during a conference about rescheduling that occurs during the conference. Hesse ¶¶ 30, 33, 43, 51, 53–54, 66, 73, 85, 88, 136, 140, 143, 171, 179, 181–182, 193, 202, 206, 209, [57]. Hence, Hesse teaches or suggests notifying a partially available human participant about a topic of interest “coming up for discussion,” as recited in claims 1, 11, and 16. *See* Ans. 5–8.

Further, to receive notifications “by e-mail, automated telephone system and/or text paging,” a human participant provides contact information, e.g., “phone number,” “email address, cellular phone number, [and/or] pager number.” Hesse ¶¶ 136, 143, 202, 209; *see id.* ¶¶ 49, 84 (Table 2 “contact information for use to notify participant”), 88 (Table 3 “Contact information”), 177; Final Act. 12; Ans. 6–7. Hence, Hesse teaches or suggests “sending a notification message . . . to a communication device associated with the partially available participant,” e.g., to the partially available human participant’s cellular phone, as recited in claims 1, 11, and 16. *See* Ans. 6–7.

For the reasons discussed above, Appellants’ arguments have not persuaded us that the Examiner erred in rejecting claims 1, 11, and 16 for obviousness based on Chen, Hesse, and Muller. Thus, we sustain the § 103(a) rejection of claims 1, 11, and 16.

DEPENDENT CLAIMS 3, 6, 8, 13, 15, 17, 18, AND 21–23

Claims 3, 6, 8, and 21 depend from claim 1; claims 13, 15, and 22 depend from claim 11; and claims 17, 18, and 23 depend from claim 16. Appellants do not argue patentability separately for these dependent claims. *See* App. Br. 15–16; Reply Br. 6–7. Thus, we sustain the § 103(a) rejection of these dependent claims for the same reasons as claims 1, 11, and 16. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The § 103(a) Rejections of Claims 2, 7, 9, 10, 12, 19, and 20

Claims 2, 7, 9, and 10 depend from claim 1; claim 12 depends from claim 11; and claims 19 and 20 depend from claim 16. Appellants do not argue patentability separately for these dependent claims. *See* App. Br. 15–16; Reply Br. 6–7. Thus, we sustain the § 103(a) rejections of these

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dependent claims for the same reasons as claims 1, 11, and 16. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We reverse the rejection of claims 1–3, 6–13, and 15–23 under 35 U.S.C. § 101.

We affirm the rejections of claims 1–3, 6–13, and 15–23 under 35 U.S.C. § 103(a).

Because we affirm at least one ground of rejection for each claim on appeal, we affirm the Examiner’s decision to reject all of the claims on appeal. *See* 37 C.F.R. § 41.50(a)(1).

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