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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/201,029	03/07/2014	Daniel Lievens	IPP201327910/258625	7711
143177	7590	05/17/2019	EXAMINER	
Shook, Hardy & Bacon L.L.P. (United Parcel Service, Inc.) 2555 Grand Blvd. Kansas City, MO 64108-2613			NGUYEN, HIEP VAN	
			ART UNIT	PAPER NUMBER
			3686	
			NOTIFICATION DATE	DELIVERY MODE
			05/17/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL LIEVENS, VINCENT DETHIER, and
LUC PIRENNE¹

Appeal 2018-001829
Application 14/201,029
Technology Center 3600

Before JENNIFER S. BISK, LARRY J. HUME, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–20, which are all claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as United Parcel Service Of America, Inc. App. Br. 4.

BACKGROUND²

Appellants' disclosed embodiments and claimed invention relate to systems and methods of managing item pickup at attended delivery/pickup locations. Spec. 3. Claim 1, reproduced below, is illustrative of the subject matter on appeal:

1. A computer-implemented method of delivering a parcel to an alternate delivery/pickup location, said method comprising:

[(1)] providing, by at least one processor, a selection of one or more attended delivery/pickup locations to a first user;

[(2)] receiving, by at least one processor, a request from said first user to deliver one or more parcels to a particular one of said one or more attended deliver/pickup locations, said one or more parcels having one or more intended parcel recipients;

[(3)] facilitating delivery, by at least one processor, of said one or more parcels from an origin location to said particular one of said one or more attended delivery/pickup locations; and

[(4)] receiving, by at least one processor, an indication that said one or more intended parcel recipients is attempting to pickup said one or more parcels from said particular one of said one or more attended delivery/pickup locations;

[(5)] receiving, by at least one processor, an indication that said one or more intended parcel recipients is attempting to pickup said one or more parcels from said

² Throughout this Decision we have considered the Specification filed March 7, 2014 ("Spec."), the Final Rejection mailed November 17, 2016 ("Final Act."), the Appeal Brief filed May 25, 2017 ("Appeal Br."), the Examiner's Answer mailed October 11, 2017 ("Ans."), and the Reply Brief filed December 11, 2017 ("Reply Br.").

particular one of said one or more attended
delivery/pickup locations;

[(6)] confirming, by at least one processor, an identity of
said one or more intended parcel recipients; and

[(7)] at least partially in response to said confirmation,
enabling release, by at least one processor, of said one or
more parcels to said one or more confirmed intended
parcel recipients.

Appeal Br. 28 (Claims App'x) (limitation numbering added).

REJECTIONS

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to
patent-ineligible subject matter. Final Act. 2–4.

Claims 1–20 stand rejected under 35 U.S.C. § 102(b) as being
anticipated by US 2005/0006470 A1, published Jan. 13, 2015 (“Mrozik”).
Final Act. 4–14.

ANALYSIS

We review the appealed rejections for error based upon the issues
identified by Appellants, and in light of the arguments and evidence
produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010)
(precedential). To the extent Appellants have not advanced separate,
substantive arguments for particular claims, or other issues, such arguments
are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We have considered all of Appellants’ arguments and any evidence
presented. We highlight and address specific findings and arguments for
emphasis in our analysis below.

Rejection of Claims 1–20 under 35 U.S.C. § 102(b)

For purposes of the anticipation rejection, Appellants argue claims 1–20 together as a group. *See* App. Br. 24–26; Reply Br. 10–11. Therefore, consistent with the provisions of 37 C.F.R. § 41.37(c)(1)(iv), we limit our discussion to independent claim 1.

The Examiner finds that claims 1–20 are anticipated by Mrozik. Final Act. 4–14. Specifically, the Examiner contends that Mrozik discloses “providing . . . a selection of one or more attended delivery/pickup locations to a first user.” Final Act. 4. According to the Examiner, the claimed “first user” is Mrozik’s “agent of service provider,” who transports an item to a retail store 102 and, upon arrival at the store, “select[s] the store’s name or other identifying information (address, building name, telephone number, etc.) as it is contained in a hand-held data acquisition and storage device 108.” *Id.* at 4–5 (quoting ¶ 40). (emphasis omitted). For the limitation “receiving . . . a request from said first user to deliver one or more parcels to a particular one of said one or more attended delivery/pickup locations, said one or more parcels having one or more intended parcel recipients,” the Examiner explains that Mrozik discloses “packages associated with the selected store are identified by the package tracking identifiers that . . . [are] to be delivered at that location.” *Id.* (citing Mrozik ¶¶ 29, 41). (emphasis omitted).

Appellants argue that Mrozik does not anticipate the claims because, among other deficiencies, Mrozik does not disclose “receiving, from a first

user, a first request to deliver one or more parcels to an attended delivery/pickup location.”³ Appeal Br. 25–26.

We agree with Appellants that the Examiner does not sufficiently explain, nor is it obvious from the cited portions of Mrozik, that Mrozik discloses “receiving . . . a request from said first user to deliver one or more parcels to a particular one of said one or more attended delivery/pickup locations.” Final Act. 5. As discussed above, the Examiner points to Mrozik’s “agent of service provider” as the claimed first user. *Id.* The Examiner, however, does not explain how Mrozik discloses that the agent of the service provider requests delivery of one or more parcels to an attended delivery/pickup location. In fact, nothing in the paragraphs cited by the Examiner for this limitation refers to any user requesting delivery. *See* Mrozik ¶ 29 (discussing that, upon deliver, an agent of the service provider will record that delivery), ¶ 41 (describing how the service provider agent confirms the accuracy of handheld device’s association of packages with the retail store to which they are to be delivered based on the information on the package itself). Moreover, we read other portions of Mrozik as indicating that the corporate headquarters of a retail store is responsible for actually requesting delivery of a parcel to a particular location. *See* Mrozik ¶ 5 (“[I]n one scenario a corporate headquarters (HQ) may be responsible for maintaining the inventory in one or more retail outlets. HQ may order items from any number of vendors (a shipper).”). The Examiner, therefore, does not sufficiently explain how Mrozik discloses “said first user” requests delivery. Appeal Br. 28 (Claims App’x).

³ A version of this limitation is recited in each of the independent claims 1, 11, and 16.

We, therefore, do not sustain the Examiner’s rejection of claims 1–20 as unpatentable under 35 U.S.C. § 102(a) as anticipated by Mrozik.

Rejection of Claims 1–20 under 35 U.S.C. § 101

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “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*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claims for an “inventive concept,” “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.’” *Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office recently issued guidance regarding this framework. See USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised

Guidance, to decide whether a claim is “directed to” an abstract idea, we evaluate whether the claim (1) recites subject matter falling within an abstract idea grouping listed in the Revised Guidance and (2) fails to integrate the recited abstract idea into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 51. If the claim is “directed to” an abstract idea, as noted above, we then determine whether the claim recites an inventive concept. The Revised Guidance explains that when making this determination, we should consider whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry.” Revised Guidance, 84 Fed. Reg. at 56.

For purposes of the § 101 rejection, Appellants argue claims 1–20 together as a group. *See* Appeal Br. 8–24; Reply Br. 3–10. Therefore, consistent with the provisions of 37 C.F.R. § 41.37(c)(1)(iv), we limit our discussion to independent claim 1. Independent claims 11 and 16 and dependent claims 2–10, 12–15, and 17–20 stand or fall with independent claim 1.

With these principles in mind, we turn to the Examiner’s § 101 rejection.

The Judicial Exception—Abstract Idea

The Examiner determined the claims recite an abstract idea encompassing organizing human activity. Ans. 15. For the reasons explained below, we agree that the claims recite an abstract idea.

As quoted and enumerated above, claim 1 includes seven main limitations. These limitations recite a process of *providing* a list of delivery

locations (limitation (1)), *receiving* a request for delivery to one of those locations (limitation (2)), *facilitating* the requested delivery (limitation (3)), *receiving* an indication of delivery and an indication that an intended recipient is attempting pickup of the package at one of the delivery locations (limitations (4 and 5)), *confirming* the identity of that intended recipient (limitation (6)), and *enabling* release of the package to the confirmed intended recipient (limitation 7). This process encompasses facilitating attended pickup and delivery of parcels, which is a method of organizing human activity—a longstanding practice of delivering packages to alternative locations. *See Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1345 (Fed. Cir. 2018) (describing, as an abstract idea, “the nontechnical human activity of passing a note to a person who is in the middle of a meeting or conversation as further illustrating the basic, longstanding practice that is the focus of the claimed invention”); *see also* Appeal Br. 14 (“[T]he present application is directed to methods, computer systems, and computer-readable storage media for facilitating pick up of items (e.g., parcels) delivered to an attended delivery/pickup location (e.g., an intermediate location).”).

Many of the claimed limitations, including at least limitations 1, 2, 4, and 5 involve gathering, analyzing, and manipulating data. When claimed in a manner similar to the claims here, gathering and analyzing information using conventional techniques has been determined to be an abstract idea. *In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607, 612–13 (Fed. Cir. 2016). Also, more recently, our reviewing court has also concluded that some acts of collecting, analyzing, manipulating, and displaying data are patent ineligible. *Univ. of Fla. Research Found., Inc. v. General Elec. Co.*, 916

F.3d 1363 (Fed. Cir. 2019) (citing *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)). The Federal Circuit has found claims including limitations that confirm identity data, as recited by limitation 6, to be abstract. *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 Fed. App'x 1014, 1017 (Fed. Cir. 2017) (stating the asserted claims are directed to an abstract process that includes “confirming the authenticity of the identity data associated with that device”); *see also Secured Mail Solutions LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 908–11 (Fed. Cir. 2017) (holding the “Intelligent Mail Barcode patents,” which recite “[a] method of verifying mail identification data” directed to an abstract idea).

In addition, these limitations, under their broadest reasonable interpretation, cover steps that, but for the recitation of the “at least one processor,” could be performed in the mind. Appeal Br. 28 (Claims App'x). That is, nothing recited in the claim prevents each of the steps from practically being performed in the mind. For example, but for the at least one processor, the claim encompasses a process that could occur using a telephone and communication between several parties—a package recipient and a delivery agent. And the Federal Circuit continues to “treat[] analyzing information by steps people go through in their minds, . . . without more, as essentially mental processes within the abstract-idea category.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (quoting *Elec. Power*; 830 F.3d at 1354).

Claims to subject matter similar to that recited here have been found ineligible by the Federal Circuit. For example, the Federal Circuit has found claims that recite “receiving from a sender a plurality of mail items,”

“identifying undeliverable mail items,” “decoding . . . encoded data,” “creating output data,” and “determining if the sender wants a corrected address,” to be abstract. *Return Mail, Inc. v. United States Postal Service*, 868 F.3d 1350, 1368 (Fed. Cir. 2017). Similarly, the Federal Circuit has found abstract claims directed to “using a marking affixed to the outside of a mail object to communicate information about the mail object.” *Secured Mail Solutions* at 911. And the Federal Circuit has found abstract claims directed to “a method for collecting and organizing information about available real estate properties and displaying this information on a digital map that can be manipulated by the user.” *Move, Inc. v. Real Estate Alliance Ltd.*, 721 Fed. App’x 950, 954 (Fed. Cir. 2018).

Accordingly, we conclude the claims recite a certain method of organizing human activity (commercial interaction) or concepts performed in the human mind identified in the Revised Guidance, and thus, an abstract idea.⁴ Revised Guidance, 84 Fed. Reg. at 52, 53 (listing “[c]ertain methods of organizing human activity . . .—commercial or legal interactions” and “[m]ental processes—concepts performed in the human mind (including an

⁴ Our reviewing court recognizes 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). That need not and, in this case does not, “impact the patentability analysis.” *Id.* at 1241. Further, “[a]n abstract idea can generally be described at different levels of abstraction The Board’s slight revision of its abstract idea analysis does not impact the patentability analysis.” *Id.* Moreover, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

observation, evaluation, judgment, opinion)” each as one of the “enumerated groupings of abstract ideas.”).

Integration of the Judicial Exception into a Practical Application

If a claim recites a judicial exception, we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application. If the recited judicial exception is integrated into a practical application, the claim is not directed to the judicial exception.

Here, claim 1 recites the additional elements of “at least one processor.” Appeal Br. 28 (Claims App’x). Considering claim 1 as a whole, the additional elements do not apply or use the abstract idea in a meaningful way such that the claim as a whole is more than a drafting effort designed to monopolize the exception. The Supreme Court guides that the “prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or [by] adding ‘insignificant postsolution activity.’” *Bilski*, 561 U.S. at 610–11 (quoting *Diamond v. Diehr*, 450 U.S. 175, 191–92 (1981)).

The Specification describes the at least one processor as a generic component. For example, the Specification states that the recited functionality “can be implemented by a computer executing computer program instructions” that “may be loaded onto a general purpose computer.” Spec. 6.

Appellants' arguments have not persuaded us claim 1 is "directed to" a patent-eligible concept. For example, Appellants argue the Examiner failed to establish a prima facie case of patent ineligibility. Appeal Br.10–22; Reply Br. 3, 9–10. We disagree. The Federal Circuit has repeatedly noted that "the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production." *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The Examiner satisfies the burden of establishing a prima facie case under 35 U.S.C. § 132 by setting forth a rejection in a sufficiently articulate and informative manner. *See In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). If the Examiner "adequately explain[s] the shortcomings . . . the burden shifts to the applicant to rebut the prima facie case with evidence and/or argument." *Hyatt*, 492 F.3d at 1370.

The Final Office Action adequately explains the § 101 rejection. *See* Final Act. 2–4. The Examiner's statements satisfy § 132(a) because they apply the Alice analytical framework and apprise Appellants of the reasons for the § 101 rejection under that framework. Appellants have not responded by alleging a failure to understand the rejection. To the contrary, Appellants clearly identify the abstract idea identified by the Examiner. *See* Appeal Br. 12 ("The Purported Abstract Idea is nearly a complete duplication of independent claim 1, including all seven steps of the claimed method.").

Appellants also argue that the claims are not directed to an abstract idea because they "define a specific process for making alternative delivery of a parcel to an intended recipient at an intermediate location and a way to confirm the authorization of the person attempting to retrieve the parcel from

the intermediate location.” Appeal Br. 15, *see also* 22–24. However, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”

Intellectual Ventures I LLC v. Symantec Corp., 838 F.3d 1307, 1315 (Fed. Cir. 2016) (emphasis omitted) (quoting *Diehr*, 450 U.S. at 188–89).

Finally, Appellants argue that the recited “attended delivery/pickup location,” “one or more parcels,” and “intended parcel recipients” (and many other recited elements) are “additional elements” beyond the purported abstract idea. Appeal Br. 17–20. We, however, are not persuaded that these elements are anything more than objects represented by data in the abstract idea identified above. These objects are similar to the mail object in *Secured Mail Solutions* and the electric power grid in *Electric Power Group* in that they are objects represented by data in the claimed methods. *Secured Mail Solutions*, 873 F.3d at 911; *Elec. Power Grp.*, 830 F.3d at 1353–54. These objects, however, are a part of the abstract idea and are not additional elements that integrate the recited abstract idea into a practical application.

Accordingly, even in combination with all the other recited elements, the additional elements do not integrate the abstract idea into a practical application because they do not impose any meaningful limits on practicing the abstract idea. For these reasons, we determine that claim 1 does not integrate the recited abstract idea into a practical application.

Inventive Concept

Because we agree with the Examiner that claim 1 is “directed to” an abstract idea, we consider whether an additional element (or combination of elements) adds a limitation that is not well-understood, routine, conventional

(“WURC”) activity in the field or whether the additional elements simply append WURC activities previously known to the industry, specified at a high level of generality, to the judicial exception. Revised Guidance, 84 Fed. Reg. at 23. The Examiner’s finding that an additional element (or combination of elements) is WURC activity must be supported with a factual determination. *Id.* (citing MPEP § 2106.05(d), as modified by the *Berkheimer* Memorandum).⁵

Whether the additional elements (at least one or more processors) are WURC activity is a question of fact. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (“Whether something is well-understood, routine, and conventional to a skilled artisan . . . is a factual determination.”).

On the record before us, Appellants have not shown that the claims on appeal add a specific limitation beyond the judicial exception that is not “well-understood, routine, and conventional” in the field (*see* MPEP § 2106.05(d)). Other than asserting that the entirety of the claimed subject matter is unconventional, Appellants do not point to any particular claimed element that does not qualify as WURC. Appeal Br. 15, 22–24. In fact, Appellants’ Specification demonstrates the WURC nature of the claimed subject matter because it indicates they may be implemented with generic devices. Spec. 6–11.

For these reasons, we conclude that claim 1, considered as a whole, does not include an inventive concept.

⁵ Robert W. Bahr, *Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.)* (2018) (hereinafter “*Berkheimer* Memorandum”).

Therefore, we sustain the Examiner's § 101 rejection of independent claim 1. We also sustain the Examiner's § 101 rejection of claims 2–20, for which Appellants rely on the same arguments made with respect to claim 1. Appeal Br. 8–24; Reply Br. 3–10.

CONCLUSION

We conclude Appellants have demonstrated the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 102(b).

We conclude Appellants have *not* demonstrated the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101.

DECISION

Because we affirm at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner's rejection of claims 1–20.

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