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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ZHENGPING ZHANG

Appeal 2018-002470
Application 14/616,745
Technology Center 3600

Before CAROLYN D. THOMAS, PHILLIP A. BENNETT, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–21. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Zhengping Zhang. Appeal Br. 2.

The present invention relates generally to a web-based, collection law-compliant, debt collection system and method. *See* Abstr.

Independent claim 1, reproduced below, is representative of the appealed claims:

1. A method for aiding debt collection, comprising the steps of:
 - receiving data of a debt that comprise the name of a debtor and the contact information of a creditor or collector,
 - storing said data in a database,
 - creating or updating a webpage that contains said name but no information about said debt and contains a hyperlink for communication with said creditor or collector,
 - and
 - posting said webpage to make it searchable by said name on the Internet.

Appellant appeals the following rejections:

R1. Claims 1–20 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter. Final Act. 2–4.;

R2. Claims 1–8, 11–14, 18, and 19 are rejected under 35 U.S.C. § 102(a) as being anticipated by Kassir (US 2013/0159164 A1, June 20, 2013). Final Act. 4–9.; and

R3. Claims 9, 10, 15–17, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kassir. Final Act. 9–11.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Rejection under § 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with the framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”). For example, concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)).

Recently, the USPTO published revised guidance on the application of 35 U.S.C. § 101. USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).

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Under the Revised Guidance “Step 2A,” the office first looks to whether the 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); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)-(c), (e)-(h)). 84 Fed. Reg. at 51–52, 55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then (pursuant to the Revised Guidance “Step 2B”) 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. 84 Fed. Reg. at 56.

Step 2A, Prong 1 (Does the Claim Recite a Judicial Exception?)

With respect to independent method claims 1 and 12, and similarly, system claim 18, the Examiner determines that the claims are directed to “a method of facilitating a transaction between a debtor and a collector” (Final Act. 3), which we conclude are certain methods of organizing human activity, i.e., managing interactions between people, which is a type of abstract idea. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014) (holding that claim “describe[ing] only the abstract idea of showing an advertisement before delivering free content” is patent ineligible); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed Cir. 2009) (holding

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methods “directed to organizing business or legal relationships in the structuring of a sales force (or marketing company)” to be ineligible).

The Specification discloses:

It would be helpful to connect creditors and the people searching the names of individuals through the Internet for information or curiosity. Among them are debtors themselves, their relatives, neighbors, friends, attorneys, or employers, and authorized entities who conduct their background checks. The concern for their online reputation would motivate debtors to search online; and the communication initiated or authorized by debtors would always be in compliance with the FDCPA. Moreover, without any disclosure about debts, the acquisition of debtors’ location information from third parties is allowed by the law. Furthermore it would be mutually beneficial that the authorized entities, such as prospective landlords, share and exchange relevant information with creditors. In the prior art, however, no system provides such useful connections.

Therefore, it is desirable to build a FDCPA-compliant, web-based system that enables creditors to store the information about debtors and debts, enables the debt information to be fully accessible and searchable except the debtors’ identities, enables debt purchasers, service providers, or debtors to contact creditors, enables the names of the debtors to be publicly searchable without indications of their debts, enables creditors to exchange information about debtors with authorized entities, and enables debtors to dispute or negotiate with creditors. Such a system would establish cost-efficient, effective communication, information exchange, and business between creditors and interested third parties and encourage debtors to solve their debt problems with creditors.

Spec. 1–2. In other words, Appellant describes an invention that aims to provide useful connections between people, especially between debtors, creditors, and people connected to the debtors, i.e., “opens up a wider communication channel that enables more parties than just a debtor to

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communicate with a creditor or collector.” Appeal Br. 4 (citing Spec. 2, ¶ 4, ll. 2–5).

For example, claim 1 recites at least the following limitations: (1) “receiving data of a debt that comprise the name of a debtor and the contact information of a creditor,” (2) “storing said data,” (3) “creating or updating a webpage . . . contains a hyperlink for communication,” and (4) “posting said webpage.” Claim 1. These limitations, under their broadest reasonable interpretation, at least recite business practices and interactions between people, i.e., connecting creditors with individuals including debtors and others interested in the named debtors.

Appellant challenges the Examiner’s determinations on the ground that “[t]he OA missed or ignored” elements and “overgeneralized what [is] recited in the claim.” Appeal Br. 3. However, whichever way the concept is described by the Examiner, we do not see that Appellant has adequately shown that claim 1 is not directed to an abstract idea. Just because the claim includes more words than the phrase the Examiner uses as an articulation of the abstract idea to which he/she found the claim to recite, is an insufficient reason to persuasively argue that claim 1 does not recite an abstract idea. Further, the identified abstract idea need not encompass every claim limitation. Otherwise, there would be no need for step two of the *Alice* inquiry. *Alice*, 134 S. Ct. at 2355.

Therefore, for at least the aforementioned reasons, we agree with the Examiner that claim 1 recites an abstract idea, which we conclude is certain methods of organizing human activity.

Step 2A—Prong 2 (integration into Practical Application)²

Under the Revised Guidance, we now must determine if additional elements in the claims integrate the judicial exception into a **practical application** (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

We discern no additional element (or combination of elements) recited in Appellant’s representative claim 1 that integrates the judicial exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 54–55 (“Prong 2”). For example, Appellant’s claimed additional elements (**e.g.**, “a webpage,” “database,” “web server,” “a processor,” and “a memory”) do not: (1) improve the functioning of a computer or other technology; (2) are not applied with any particular machine (except for a generic computer); (3) do not effect a transformation of a particular article to a different state; and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception. *See* MPEP §§ 2106.05(a)–(c), (e)–(h).

Appellant contends that, like *DDR*, the “process is not known in prior art and is organically tied to or integrated with the Internet and with its web techniques.” Appeal Br. 4. We disagree with Appellant.

In *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014), the subject claim was held patent-eligible because it

² We acknowledge that some of the considerations at Step 2A, Prong 2, properly may be evaluated under Step 2 of *Alice* (Step 2B of the Office revised guidance). For purposes of maintaining consistent treatment within the Office, we evaluate them under Step 1 of *Alice* (Step 2A of the Office revised guidance). *See* Revised Guidance, 84 Fed. Reg. at 55 n.25, 27–32.

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encompassed “an inventive concept” for resolving a “particular Internet-centric problem.” In contrast, we find Appellant’s method (claim 1) does not provide a solution “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR*, 773 F.3d at 1257. Because we find all claims on appeal merely use a generic computer or processor as a tool which is used in the way a computer normally functions, we conclude claims 1–20 fail to impart any discernible improvement upon the computer or processor, nor do Appellant’s claims solve “a challenge particular to the Internet” as considered by the court in *DDR*, 773 F.3d at 1256-57. Instead, the claims use the Internet as a tool to reach debtors and/or creditors. Thus, we conclude none of Appellant’s claims are like the claim held patent-eligible by the court in *DDR*, in which the claimed invention was directed to the “challenge of retaining control over the attention of the customer in the context of the Internet,” such that:

Instead of the computer network operating in its normal, expected manner by sending the website visitor to the third-party website that appears to be connected with the clicked advertisement, the claimed system generates and directs the visitor to the above-described hybrid web page that presents product information from the third-party and visual “look and feel” elements from the host website.

DDR, 773 F.3d at 1258-59. Thus, we find unavailing Appellant’s arguments that the claims are “[s]imilar to the *DDR* example” (Appeal. Br. 5), given that no convincing “inventive concept” for resolving a “particular Internet-centric problem” is identified by Appellant.

Thus, we agree with the Examiner that “[t]he focus of the claims in the instant application is not on such an *improvement in computers as tools*, but on an *independently abstract idea that uses computers as tools*.” Ans. 4. We also agree with the Examiner that Appellant’s Specification merely

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states that the improvements achieved concern “opening lines of communications to exchange information” in a cost efficient way. *See* Ans. 4 (citing Appellant’s Specification 2:9–16.).

For instance, Appellant’s Specification states:

Therefore, it is desirable to build a FDCPA-compliant, web-based system that enables creditors to store the information about debtors and debts, enables the debt information to be fully accessible and searchable except the debtors’ identities, enables debt purchasers, service providers, or debtors to contact creditors, enables the names of the debtors to be publicly searchable without indications of their debts, enables creditors to exchange information about debtors with authorized entities, and enables debtors to dispute or negotiate with creditors. Such a system would establish cost-efficient, effective communication, information exchange, and business between creditors and interested third parties and encourage debtors to solve their debt problems with creditors.

Spec. 2:9–16. In other words, Appellant’s invention relates to a cost-efficient way to exchange information.

For at least the reasons noted *supra*, we determine that claim 1 (1) recites a judicial exception and (2) does not integrate that exception into a practical application. Thus, representative claim 1 is directed to the aforementioned abstract idea.

Alice/Mayo—Step 2 (Inventive Concept)
Step 2B identified in the Revised Guidance

Turning to the second step of the *Alice* inquiry, we now look to whether claim 1 contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. *Alice*, 573 U.S. at 216. As recognized by the Revised Guidance, an “inventive concept” under *Alice* step 2 can be evaluated based on whether an additional element or combination of elements:

- (1) adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present; or
- (2) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.

See Revised Guidance, 84 Fed. Reg. at 56; *see also* MPEP § 2106.05(d).

Appellant contends “the idea of posting debtors’ names without their debts’ information recited in the claim is not common, understood, or known for debt collection.” Appeal Br. 3–4; *see also id.* at 5.

In response, the Examiner determines that “[a]lthough the claims recite specific steps, such as those involving the creation of a webpage, the steps do not require anything apart from routine, conventional, well-known computer functions, such as receiving, storing, processing, and transmitting data.” Ans. 5; *see also* Ans. 7–8 (citing *BASCOM Global Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). In other words, the Examiner determines that the claims merely amount to the application of the abstract idea using a generic computer in its ordinary sense to carry out the abstract idea itself. Such an analysis is a factual determination. *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 at the time of the patent is a factual determination.”).

We find the Examiner’s noting the generic nature of the component parts recited in the claims provides sufficient evidence of a generic computer system used to implement the abstraction. *See Credit Acceptance Corp. v. Westlake Services*, 859 F.3d 1044, 1057 (Fed. Cir. 2017) (“Significantly, the

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claims do not provide details as to any non-conventional software for enhancing the financing process.”). *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”).

We find no element or combination of elements recited in Appellant’s claim 1 that contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. More importantly, Appellant has not adequately explained how claim 1 is performed such that it is not a routine and conventional function of a generic computer.

Furthermore, we highlight that a finding of novelty or non-obviousness does not require the conclusion that the claimed subject matter is patent-eligible. Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or nonobviousness, but, rather, is a search for “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 216. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90. *See also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in

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determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

Because Appellant’s independent claim 1 is directed to a patent-ineligible abstract concept, does not include additional elements that integrate the judicial exception into a practical application, and does not add a specific limitation beyond the judicial exception that is not “well-understood, routine, and conventional,” we sustain the Examiner’s rejection of the claims 1–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice*, its’ progeny, and the Revised Guidance.

Anticipated and/or Obvious over Kassir

Appellant contends that “[c]laim 1 is not anticipated because its element of ‘creating or updating a webpage that contains said name but no information about said debt’ is not found in *Kassir* In fact, *Kassir* was based on one key concept ‘anonymous debtor match’ (ADM), *i.e.* no names of debtors involved in its data collection and storage.” Appeal Br. 7.

Appellant further contends that “the OA erred in construing . . . ‘the last four digits of the debtor’s Social Security Number’ as the debtor’s name.” *Id.* (citations omitted).

Here, the Examiner “considers the last four digits of the debtor’s Social Security Number to comprise a name -- a user defined identity (*i.e.*, user name) by which a person is designated. There is nothing in the claims to preclude such a reading of the claim limitation.” Ans. 9. We disagree with the Examiner.

Although the Social Security Number is used to identify an individual, we find that one of ordinary skill in the art would interpret such a number as being distinguishable from one’s “name.” Claim 1 specifically recites “the

name of a debtor” (*see* claim 1), as opposed to *any* identifying information of the debtor. As such, we find that the Examiner overreached in equating one’s “name” with one’s Social Security Number.

Thus, we disagree with the Examiner’s finding that *Kassir* discloses “creating or updating a webpage that contains said name,” as recited in each of the independent claims, given that *Kassir* merely uses “anonymous search parameters . . . such as the last four digits of the debtor’s Social Security Number.” *See Kassir* ¶ 36. Since we agree with at least one of the arguments advanced by Appellant, we need not reach the merits of Appellant’s other arguments. Accordingly, we will *not* sustain the Examiner’s anticipation and/or obviousness rejections of claims 1–20 over *Kassir*.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	
1–8, 11–14, 18, 19	102	<i>Kassir</i>		1–8, 11–14, 18, 19
9, 10, 15–17, 20	103	<i>Kassir</i>		9, 10, 15–17, 20
Overall Outcome			1–20	

Because at least one rejection encompassing all claims on appeal is affirmed, the decision of the Examiner is affirmed.

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED