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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte NICHOLAS J. BALDO, ANAND K. HARIHARAN,
MARK P. O'CONNOR, and SUSAN E. SMITH

_____

Appeal 2018-002709
Application 14/175,644[1]
Technology Center 2100

_____

Before JOHNNY A. KUMAR, JOHN A. EVANS, and
CATHERINE SHIANG, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
rejection of claims 1–6, 8–13, 15–19, and 21, which are all the claims
pending and rejected in the application. We have jurisdiction under
35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify International Business Machines Corporation as the
real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Introduction

According to the Specification, the present invention relates to software development, and more particularly to defect turnaround time analytics. *See generally* Spec. 1. Claim 1 is exemplary:

> 1.   A method for generating defect turnaround time metrics for assessing project status for reducing defects in a software product, the method comprising:
>
> a computer retrieving defect turnaround time criteria of the software product from a database;
>
> the computer importing defect turnaround time data of the software product including a timestamp of when the defect in the software product is reported and when the defect moves through life cycle phases, wherein the defect turnaround time criteria identify a measurement against a threshold of the defect turnaround time data;
>
> the computer analyzing the timestamp of when the defect moves through the life cycle phases based, at least in part, on the defect turnaround time criteria and the defect turnaround time data;
>
> the computer mapping a state of the defect to a phase in the life cycle phases based on the timestamp of the defect moving through the life cycle phases, wherein the phase includes a triage phase, a resolution phase, and a retest phase;
>
> the computer generating defect turnaround time metrics based on the time stamp, the defect turnaround time criteria, and the defect turnaround time data, wherein the defect turnaround time metrics relate to the defect failing to meet the threshold and information regarding a root cause of the defect, wherein the information regarding the root cause of the defect includes defect categories, specific failing applications associated with the defect, project teams or units to measure or evaluate that are associated with the defect, a list of core defects and design defects associated with the defect of the software product, and a list of core defect turnaround times; and

the computer displaying a graph on a graphical user
interface of the defect turnaround time metrics for the software
product over a period of time, wherein the graph enables a
visual indication of a trend in the defect turnaround time
metrics.

Rejections[2]

Claims 1–6, 8–13, 15–19, and 21 stand rejected under 35 U.S.C.
§ 112(a) because they fail to comply with the written description
requirement. Final Act. 8–10.

Claims 1–6, 8–13, 15–19, and 21 stand rejected under 35 U.S.C. § 101
because they are directed to patent-ineligible subject matter. Final Act. 10–
12.

ANALYSIS

35 U.S.C. § 112(a)

The Examiner determines claims 1–6, 8–13, 15–19, and 21 fail to
comply with the written description requirement with respect to "reducing
defects" in a software product, which is recited in all of the claims. *See*
Final Act. 8–9; Ans. 2–4.

We disagree. To satisfy the written description requirement, the
disclosure must reasonably convey to skilled artisans that Appellants
possessed the claimed invention as of the filing date. *See Ariad Pharms.,
Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc).

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[2] Throughout this opinion, we refer to the (1) Final Rejection dated Apr. 18,
2017 ("Final Act."); (2) Appeal Brief dated Sept. 18, 2017 ("App. Br.");
(3) Examiner's Answer dated Nov. 16, 2017 ("Ans."); and (4) Reply Brief
dated Jan. 16, 2018 ("Reply Br.").

Specifically, the description must "clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed" and

> the test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art. Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.

Id. (internal quotations and citations omitted).

Appellants cite several paragraphs of the Specification for supporting the disputed claim limitation. *See* App. Br. 7–8; Reply Br. 2–4. In particular, the Specification describes defects in software development and explains "when large defect volumes are involved, it is imperative that a project manager quickly identify and address the root cause of a negative trend." Spec. ¶ 12. The Specification then describes "corrective action plans" and "development of corrective actions" to correct defects during software development. Spec. ¶¶ 12–13. As a result, we agree with Appellants that the Specification reasonably conveys to ordinarily skilled artisans that Appellants possessed the claimed invention with respect to "reducing defects" in a software product as of the filing date. *See* App. Br. 7–8; Reply Br. 2–4.

Because the Examiner has not articulated a sufficient basis for the rejection, we reverse the Examiner's rejection of claims 1–6, 8–13, 15–19, and 21 under 35 U.S.C. § 112(a).

35 U.S.C. § 101

We disagree with Appellants' arguments, and agree with and adopt the Examiner's findings and conclusions in (i) the action from which this

appeal is taken (Final Act. 10–12) and (ii) the Answer (Ans. 5–17) to the extent they are consistent with our analysis below.[3]

The Examiner rejects the claims under 35 U.S.C. § 101 because they are directed to patent-ineligible subject matter. *See* Final Act. 10–12; Ans. 5–17. In particular, the Examiner concludes the claims are directed to the abstract idea of collecting, analyzing, and displaying information, and are similar or analogous to the claims in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–56 (Fed. Cir. 2016). *See* Ans. 6. The Examiner determines the claims do not identify an inventive concept to transform the nature of the claims into a patent-eligible application. *See* Final Act. 11–12; Ans. 7–17. Appellants argue the Examiner erred. *See* App. Br. 8–25; Reply Br. 4–18.

Appellants have not persuaded us of error. Section 101 of the Patent Act provides "[w]hoever 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. That provision "contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). According to the Supreme Court:

> [W]e set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from

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[3] To the extent Appellants advance new arguments in the Reply Brief without showing good cause, Appellants have waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

> those that claim patent-eligible applications of those concepts.
> First, we determine whether the claims at issue are directed to
> one of those patent-ineligible concepts. If so, we then ask,
> "[w]hat else is there in the claims before us?" To answer that
> question, we consider 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. We have described
> step two of this analysis as a search for an "'inventive concept'"
> —*i.e.*, 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 Corp., 134 S. Ct. at 2355 (citations omitted) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S.Ct. 1289, 1294, 1296–98 (2012)).

The Federal Circuit has described the *Alice* step-one inquiry as looking at the "focus" of the claims, their "character as a whole," and the *Alice* step-two inquiry as looking more precisely at what the claim elements add—whether they identify an "inventive concept" in the application of the ineligible matter to which the claim is directed. *See Elec. Power Grp.*, 830 F.3d at 1353; *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Regarding *Alice* step one, the Federal Circuit has "treated *collecting information*, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas." *Elec. Power*, 830 F.3d at 1353 (emphasis added); *see also Internet Patents*, 790 F.3d at 1348–49; *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). "In a

similar vein, we have treated *analyzing information* [including manipulating information] by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Elec. Power*, 830 F.3d at 1354 (emphasis added); *see also In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016). "And we have recognized that *merely presenting the results of abstract processes of collecting and analyzing information, without more* (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis." *Elec. Power*, 830 F.3d at 1354 (emphasis added); *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714–15 (Fed. Cir. 2014).

The rejected claims "fall into a familiar class of claims 'directed to' a patent-ineligible concept." *Elec. Power*, 830 F.3d at 1353. Contrary to Appellants' arguments (App. Br. 8–25; Reply Br. 4–18), the claims are similar to the claims of *Electric Power*, as pointed out by the Examiner (Ans. 5). *See Elec. Power*, 830 F.3d at 1354. For example, claim 1 is directed to collecting information ("retrieving . . . importing . . ."), analyzing information ("analyzing . . . mapping . . . generating . . ."), and displaying information ("displaying . . ."). And independent claims 8 and 15 are similarly directed to colleting, analyzing, and displaying information. *Id.* at 1353. The dependent claims are directed to similar functions or processes, and Appellants have not persuasively shown such claims are directed to other non-abstract functions or processes. *See* claims 2–6, 9–13, 16–19, and 21.

Contrary to Appellants' assertion (App. Br. 12; Reply Br. 5–6, 9–10), the rejected claims are not analogous to the claims in *Enfish*. In *Enfish*, the

court determines:

> The . . . patents are directed to an innovative logical model for a computer database. . . . A logical model generally results in the creation of particular tables of data, but it does not describe how the bits and bytes of those tables are arranged in physical memory devices. Contrary to conventional logical models, the patented logical model includes all data entities in a single table, with column definitions provided by rows in that same table. The patents describe this as the "self-referential" property of the database.

Enfish, 822 F.3d at 1330.

> [T]he plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.
>
> . . . [T]he claims . . . are directed to a specific improvement to the way computers operate, embodied in the self-referential table.

Id. at 1336.

The rejected claims are not analogous to the claims of *Enfish* because they are not "an improvement to computer functionality itself." *Id.* at 1336. Instead, they are similar to the claims of *Electric Power*, because "the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools." *Elec. Power*, 830 F.3d at 1354. In particular, Appellants' assertion that the claims recite "improvement[s] to computer functionality" and "are not abstract idea[s]" (App. Br. 12, *see also* App. Br. 14–25; Reply Br. 4–18) is unpersuasive, as Appellants have not shown managing data with generic computers constitutes improvement to computer functionality.

Regarding Appellants' assertion about paragraph 13 of the Specification (Reply Br. 7; Spec. ¶ 13 ("Embodiments of the present

invention recognize that efficiency can be gained by implementing a tool that can analyze significant amounts of . . . data and provide . . . information that . . . enables development of corrective actions that would not otherwise be feasible.")), our reviewing court has declared:

> While the claimed system and method certainly *purport to accelerate the process of analyzing* audit log *data, the speed increase comes from the capabilities of a general-purpose computer, rather than the patented method itself.* See *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.),* 687 F.3d 1266, 1278 (Fed. Cir. 2012) ("[T]he fact that the required calculations could be performed *more efficiently* via a computer does not materially alter the patent eligibility of the claimed subject matter.").

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1095 (Fed. Cir. 2016) (emphases added).

Applying this reasoning to the rejected claims, we similarly find any purported efficient techniques come from the capabilities of general-purpose computers (the recited "computer," "computer program product," and "computer system"), rather than the claimed steps or functions. Similar to the claims of *FairWarning,* the rejected claims "are not directed to an improvement in the way computers operate" and "the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools." *FairWarning,* 839 F.3d at 1095.[4]

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[4] Appellants also "disagree[] with the Examiner's position that the invention recited in claim 1 can be performed mentally with aid of pen and paper and is an abstract idea of itself." App. Br. 13. However, Appellants do not persuasively explain why the Examiner's finding is incorrect. In any event, our analysis does not require that finding.

Regarding *Alice* step two, contrary to Appellants' assertion (App. Br. 8–25; Reply Br. 4–18), Appellants have not shown the claims in this case require any "inventive concept" or inventive set of components or methods, or invoke any assertedly inventive programming. *Elec. Power*, 830 F.3d at 1355.

Further, contrary to Appellants' arguments (App. Br. 8–25; Reply Br. 4–18), the claims are similar to the claims of *Electric Power*, because they do not require any nonconventional computer, network, or display components, or even a "non-conventional and non-generic arrangement of known, conventional pieces," but merely call for performance of the claimed information collection, analysis, and display functions on generic computer components and display devices. *See Elec. Power*, 830 F.3d at 1355; *see also* Claim 1 (reciting "a computer . . . a database"); Claim 8 (reciting "a computer program product . . . comprising[] one or more computer-readable storage media"); Claim 15 (reciting a "computer system . . . comprising[] one or more computer processors; one or more computer-readable storage media"). The dependent claims call for similar generic components and devices, and Appellants have not shown such claims require any non-conventional components or devices. *See* claims 2–6, 9–13, 16–19, and 21.

Similar to the claims of *Electric Power*, the rejected claims specify what information is desirable to gather, analyze, and display, but they "do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying . . . by use of anything but entirely conventional, generic technology." *Elec. Power*, 830 F.3d at 1356. Therefore, similar to the claims of *Electric Power*, the rejected claims "do

not state an arguably inventive concept in the realm of application of the
information-based abstract ideas." *Id.*

Appellants' argument (App. Br. 16–17; Reply Br. 11) about *DDR
Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) is
equally unpersuasive. In *DDR Holdings*, the Court finds:

> [*T*]*he 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.* 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.* When the limitations of the '399 patent's
> asserted claims are taken together as an ordered combination,
> the claims recite an invention that is not merely the routine or
> conventional use of the Internet.

DDR Holdings, 773 F.3d at 1258–59 (emphases added).

Unlike the claims of *DDR Holdings*, the claims here do not "specify
how interactions with the Internet are manipulated to yield . . . a result that
overrides the routine and conventional sequence of events." *Id.* at 1258.
Further, this case is distinguished from *DDR Holdings* because as discussed
above, the claims here recite inventions that are merely the routine or
conventional use of the technology—the opposite of what the claims of *DDR
Holdings* represent. *Id.* at 1258–59.

Appellants further cite *BASCOM Global Internet Services, Inc. v.
AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) (App. Br. 17–18), but
do not persuasively explain why that case is similar to the present case. In

BASCOM, the court determined that at the pleading stage and construed in favor of the nonmovant,

> [t]he inventive concept described and claimed . . . *is the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.* *This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.* BASCOM explains that the inventive concept rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.

Id. at 1350 (emphasis added).

The rejected claims are unlike the claims of *BASCOM* because they are not directed to an "installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user." *Id.* at 1350. Nor do they "give[] the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server." *Id.* In fact, the pending claims do not even recite any "ISP server."

In short, Appellants have not shown the claims, read in light of the Specification, require anything other than conventional computer, network, and display technology for collecting, analyzing, and presenting the desired information. *See Elec. Power*, 830 F.3d at 1354. Such invocations of computers and networks are "insufficient to pass the test of an inventive concept in the application" of an abstract idea and, therefore, do not add significantly more to that idea. *Elec. Power*, 830 F.3d at 1355.

Because Appellants have not persuaded us the Examiner erred, we sustain the Examiner's rejection of claims 1–6, 8–13, 15–19, and 21 under 35 U.S.C. § 101.

DECISION

We reverse the Examiner's decision rejecting claims 1–6, 8–13, 15–19, and 21 under 35 U.S.C. § 112(a).

We affirm the Examiner's decision rejecting claims 1–6, 8–13, 15–19, and 21 under 35 U.S.C. § 101.

Because we affirm at least one ground of rejection with respect to each claim, we affirm the Examiner's decision rejecting claims 1–6, 8–13, 15–19, and 21. *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