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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VINCENT P. ANNUNZIATA

Appeal 2018-002884
Application 13/875,723
Technology Center 3600

Before CARL W. WHITEHEAD JR., JEFFREY S. SMITH and
JAMES B. ARPIN, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ is appealing the final rejection of claims 1–20 under 35 U.S.C. § 134(a). Appeal Brief 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Introduction

The invention is directed to “a system for trading commodities and the like over the Internet.” Specification ¶ 1.

¹ Appellant identifies TRADECAPTURE OTC CORP. as the real party in interest. Appeal Brief 1.

Illustrative Claim

1. A system for efficient data retrieval comprising:
 - a computer;
 - a communications link between said computer and the Internet;
 - an indication database, accessible by said computer, containing a plurality of indications associated with one or more submitters, said plurality of indications containing information corresponding to open bids or offers for commodities;
 - a user database, accessible by said computer, containing a plurality of user files, wherein at least one user file among said plurality of user files is associated with at least one submitter among the one or more submitters, said at least one user file containing a plurality of transaction parameters corresponding to one or more indications among the plurality of indications associated with said at least one submitter, said transaction parameters governing presentation of said one or more indications to other users and acceptance of said one or more indications by said other users;
 - software executing on said computer that causes the computer to:
 - receive an indication selection by at least one of the other users over said communication link,
 - search the indication database and retrieve an indication corresponding to said indication selection,
 - identify the at least one submitter associated with the retrieved indication,
 - search the user database for the at least one user file associated with the at least one submitter and retrieve at least one transaction parameter associated with the retrieved indication from said at least one user file, and
 - process the retrieved indication corresponding to said indication selection for the at least one of the other users in accordance with the at least one transaction parameter retrieved from the at least one user file.

Rejection on Appeal

Claims 1–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Action 2–5.

ANALYSIS

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed August 1, 2017), the Reply Brief (filed January 18, 2018), the Final Action (mailed March 9, 2017) and the Answer (mailed November 30, 2017), for the respective details.

35 U.S.C. § 101 rejection

The Examiner determines the claims are patent ineligible under 35 U.S.C. § 101 because the claims are directed to an abstract idea comprising a fundamental economic practice or organizing human activity, and do not include additional elements that are sufficient to amount to significantly more than the abstract idea. Final Action 2; *see Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (describing the two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts”).

After the mailing of the Answer and the filing of the Briefs in this case, the USPTO published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “Memorandum”). Under the Memorandum, 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) (9th ed. 2018)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Memorandum.

We are not persuaded the Examiner’s rejection is in error. We adopt the Examiner’s findings and conclusions as our own, and we add the following primarily for emphasis and clarification with respect to the Memorandum.

Appellant argues the pending claims are not directed to an abstract idea because:

[T]he Examiner alleges that Appellant’s claim “recites a method trading physical and derivative commodities electronically.” However, this initial characterization of Appellant’s claims is ***completely incorrect***. Instead, Claim 1 is directed to a “***system/or efficient data retrieval***.” The fact that Appellant’s claim may be related to (or implemented in the field of) electronic trading does not make the claim any less directed to a system for efficient data retrieval.

Appeal Brief 10.

We agree with the Examiner's determination that the claims are directed to an abstract idea. *See* Final Action 3–4. The Abstract discloses that the invention is:

A system for trading commodities and the like comprising a computer, a communications link between the computer and the Internet, a database, accessible by the computer, containing a plurality of user files wherein each of the user files contains a plurality of transaction parameters corresponding to one or more indications associated with the user file.

The Specification discloses:

Accordingly, it is an object of the invention to provide a system for facilitating commodity transactions.

Another object of the present invention is to provide a system that permits the user to control how any bids or offers submitted are acted upon and viewed by other users.

Yet another object of the present invention is to provide such a system that permits users to operate within specific exchanges having specific commodities.

It is a further object of the present invention to provide such a system that enables various exchanges to create and share commodities within a unified database.

It is another object of the present invention to provide such a system that permits the user to rapidly peruse a variety of available transactions.

It is yet another object of the present invention to provide such a system that operates over the Internet.

Specification ¶¶ 6–11.

Claim 1 recites “an indication database, accessible by said computer, containing a plurality of indications associated with one or more submitters, said plurality of indications containing information corresponding to open bids or offers for commodities,” “at least one user file containing a plurality

of transaction parameters corresponding to one or more indications among the plurality of indications associated with said at least one submitter,” and wherein the software executes on the computer, a process upon “the retrieved indication corresponding to said indication selection for the at least one of the other users in accordance with the at least one transaction parameter retrieved from the at least one user file.” These steps comprise fundamental economic principles or practices and/or commercial or legal interactions; thus, the claim recites the abstract idea of “certain methods of organizing human activity.” Memorandum, Section I (Groupings of Abstract Ideas); *see* Specification ¶ 13. Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *See 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”); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (claims directed to abstract idea of processing loan information through a clearinghouse); *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer” not patent eligible).

Appellant argues:

Similar to the claims in *Enfish*, the Appellant’s claims are patent-eligible under § 101 at least because the claims are also directed to a specific improvement to the way computers in this art operate, embodied in an architecture and search functionality for the efficient retrieval of data. For example, the claims define two dedicated and independent databases, each specifically

purposed for storing and retrieving different types of information. Of note, conventional systems in this art do not segregate the data in this manner, nor do they implement separate dedicated databases, as claimed.

Appeal Brief 5.

We do not find Appellant’s arguments persuasive because the claims utilize a computer system as merely a tool to create and share commodities. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) (“[W]e find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea . . . the focus of the claims is on the specific asserted improvement in computer capabilities (i.e., the self-referential table for a computer database) or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.”). The claims do not recite an additional element or elements that reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field. *See* Final Action 5 (“The combination of elements is no more than the sum of their parts, and provides nothing more than mere automation of verification steps. Mere automation of an economic business practice does not provide significantly more (i.e., provide an inventive concept.”)); *Alice*, 573 U.S. at 222 (“In holding that the process was patent ineligible, we rejected the argument that ‘implement[ing] a principle in some specific fashion’ will ‘automatically fal[l] within the patentable subject matter of § 101.’” (alterations in original) (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978))).

Accordingly, we determine the claim does not integrate the judicial exception into a practical application. *See* Memorandum, Section III(A)(2)

(Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application). Nor do we find the claim includes a specific limitation or a combination of elements that amounts to significantly more than the judicial exception itself. *See* Memorandum, Section III(B) (Step 2B: If the Claim Is Directed to a Judicial Exception, Evaluate Whether the Claim Provides an Inventive Concept); *see also* *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1359 (Fed. Cir. 2018) (Moore, J., concurring) (“the ‘inventive concept’ cannot be the abstract idea itself”); *see* Answer 5–7; *see also* Specification ¶¶ 5, 13 and 49.

Other than the abstract idea itself, the remaining claim elements only recite generic computer components that are well-understood, routine, and conventional. *See* Final Action 5–6; Specification ¶¶ 13, 25 and 27; *Alice*, 573 U.S. at 226.

Accordingly, we agree with the Examiner’s determination that claims 1–20 are patent ineligible. *See* Final Action 4–5.

DECISION

The Examiner’s non-statutory subject matter rejection of claims 1–20 is affirmed.

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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED