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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALAN W. JOHNSON JR.

Appeal 2018-003158
Application 12/778,461
Technology Center 3600

Before JOSEPH L. DIXON, ELENI MANTIS MERCADER, and JOYCE
CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Under 35 U.S.C. § 134(a), Appellant¹ appeals the final rejection of claims 1–5, 7–21, 23–29, and 31–33, which are all of the claims pending in the application. We have jurisdiction 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 Altisource Solutions S.à.r.l. of Luxembourg. App. Br. 3.

STATEMENT OF THE CASE

The Invention

Appellant's disclosed embodiments and claimed invention relate to a loan quotation system and method. Spec. ¶ 3.

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A system comprising:

a service provider or consumer advertising platform that provides a basic loan quotation or a rate watch report to a consumer data entry point device without first transferring information obtained from the consumer data entry point device to one or more different lenders, and that subsequently, after providing the basic loan quotation or the rate watch report to the consumer data entry point device and upon permission being granted by a consumer via a software application loaded on the consumer data entry point device, transmits contact information of the consumer and a request for a personalized loan quote to a selected lender of the one or more different lenders on behalf of the consumer;

wherein the consumer data entry point device is operatively coupled, via a network, to one or more servers, and is configured for entering personal data, securely transmitting the personal data, receiving the base loan quotation or a rate watch report, and receiving the personalized loan quote via the software application loaded on the data entry point device;

wherein the providing of the basic loan quotation or the rate watch report includes one or more lending rates being watched and reported by the service provider or consumer advertising platform to the consumer data entry point device in response to: i) a request being made by the consumer via the software application; and ii) the personal data being entered by the consumer via the software application;

wherein the providing of the basic loan quotation or the rate watch report further includes the one or more lending rates being compared by the service provider or consumer advertising platform to a target lending rate provided by the consumer, and a consumer alert being sent by the service provider or consumer advertising platform to the consumer data entry point device upon the service provider or consumer advertising platform finding a match between the one or more lending rates and the target lending rate;

wherein the service provider or consumer advertising platform includes a master database and a client sync, wherein the client sync is configured to execute a backend synchronization process that syncs lender product pricing and eligibility information to multiple backend servers and one or more lender platforms, wherein each backend server includes a respective local database, wherein the backend synchronization process includes the client sync performing the steps comprising: triggering a periodic event; loading an XML for a given lender to determine lender information for a specified lender and a location of the master database; communicating with the master database at the location to retrieve the respective lender information; locating new, modified, or deleted data at the master database; and updating a specified location database based on the located new, modified, or deleted data; and

wherein the client sync comprises a combination of at least two client applications that allow for maintenance, duplication, and synchronization of guideline and lender data between multiple server databases and database instances, wherein each client application has an XML configuration which dictates the respective client application's access, order, and which lender and lender products to synchronize via which tables.

Rejection on Appeal

Claims 1–5, 7–21, 23–29, and 31–33 stand rejected under 35 U.S.C.

§ 101 as directed to patent-ineligible subject matter. Final Act. 4–5.

CLAIM GROUPING

Based on Appellant’s arguments (App. Br. 11–16) and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal of the patent-ineligible subject matter rejection of claims 1–5, 7–21, 23–29, and 31–33 on the basis of representative claim 1.²

PRINCIPLES OF LAW

“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review de novo.” *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010).

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.³ 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. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (brackets in original) (citing *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)).

² “Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

³ This threshold analysis of whether a claim is directed to one of the four statutory categories of invention, i.e., a process, machine, manufacture, or composition of matter, is referred to as “*Step 1*” in the patent-eligibility inquiry under § 101.

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*. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo*, 566 U.S. at 75–77). In accordance with that 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*, 130 S. Ct. 3218 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk . . .”).

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*, 130 S. Ct. 3218 (2010)); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diehr*, 450 U.S. at 191); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber

products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citation omitted) (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, and mathematical formulas or relationships. *Alice*, 573 U.S. at 217–21. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 217 (“[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an “inventive concept”” sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance in the Federal Register concerning the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (January 7, 2019) (hereinafter “Revised Guidance”). Under the Revised Guidance, we first look 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);⁴ and

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual for Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).⁵

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we 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.⁶

See Revised Guidance.

⁴ Referred to as “*Revised Step 2A, Prong 1*” in the Revised Guidance (hereinafter “*Step 2A(i)*”).

⁵ Referred to as “*Revised Step 2A, Prong 2*” in the Revised Guidance (hereinafter “*Step 2A(ii)*”).

⁶ Items (3) and (4) continue to be collectively referred to as “*Step 2B*” of the Supreme Court’s two-step framework, described in *Mayo* and *Alice*.

ANALYSIS

Step 1

Claim 1, as a system (machine) claim, recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. Therefore, the issue before us is whether it is directed to a judicial exception without significantly more.

Step 2A(i): Does the Claim Recite a Judicial Exception?

The Examiner determined that claim 1 is directed to a certain method of organizing human activity related to commercial practices. Final Act. 4 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction)).

The Specification provides context as to what the claimed invention is directed to. In this case, the Specification discloses that the invention “is generally related to an apparatus and method for providing consumers with loan quotations, and more particularly, to an apparatus and method whereby consumers can enter personal information and, in response to the entered data, obtain tailored loan quotations in a convenient setting.” Spec. ¶ 3.

Appellant’s Abstract describes the invention as “[a] loan quotation system and method . . . having a consumer data entry point device operatively coupled, via a network, to one or more servers for entering data and receiving a responsive loan quotation.” Abstract.

We agree with the Examiner that claim 1 recites commercial interactions that are a certain method of organizing human activity and, thus, an abstract idea. The type of activity, i.e., providing a quote or report,

transmitting information, entering personal data, transmitting personal data, receiving the quotation or report, comparing rates, sending an alert, and synchronizing information, as recited in claim 1, includes commercial interactions among a service provider or consumer advertising platform, a lender, and a consumer.

Under the broadest reasonable interpretation standard,⁷ we conclude that all of the limitations, with the exception noted by the Examiner, would ordinarily occur when organizing human activity through commercial interactions. *See* Final Act. 4 (determining that the recited “consumer data entry point device coupled to one or more servers” is an additional element and not part of the abstract idea). For example, a service provider provides a basic loan quotation or report to a consumer and subsequently transmits the consumer’s contact information and a request for a loan to a lender selected by the consumer, as recited in claim 1. The recited functions are abstract, whether initiated person-to-person, on paper, or using a computer with generic databases and synchronization processes.

⁷ During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re America Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard, we interpret claim terms using “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Thus, under *Step 2A(i)*, we agree with the Examiner that claim 1’s system recites commercial interactions, which amount to a method of organizing human activity and, thus, an abstract idea.

Step 2A(ii): Judicial Exception Integrated into a Practical Application?

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the “practical application” *Step 2A(ii)* in which 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.

The only “additional element” that the Examiner identified is the recited “consumer data entry point device coupled to one or more servers.” Final Act. 4. Appellant, however, argues that the recited “master database” and “client sync,” which are not “additional elements” for the purpose of our analysis, improve the online web quoting system in a way that overcomes technical problems found in prior art systems. *See App. Br.* 13–14.

Not only are the recited “master database” and “client sync” not “additional elements,” claim 1 as a whole merely uses instructions to implement the recited abstract idea on a computer or, alternatively, merely uses a computer as a tool to perform the abstract idea. In other words, the claims merely recite an abstract idea with instructions to implement it on “a service provider or consumer advertising platform” that includes “a master database and a client sync, wherein the client sync is configured to execute a backend synchronization process that syncs lender product pricing and

eligibility information to multiple backend servers and one or more lender platforms.” Claims App’x 18.

These are generic, purely conventional elements. In fact, the Specification states that the “system” preferably is “an enterprise-class web-based system that is sold as software and implemented in a mortgage broker/banks’ environment or is hosted with a company they choose.” Spec. ¶ 73. The Specification describes the recited “consumer advertising platform” as “one or many servers and databases.” *Id.* at ¶ 31. The Specification further describes that “[t]he master database preferably runs bots and has automated processes to import all lender data every day, as frequently as pricing is released by the various investors and banks.” *Id.* The Specification describes that “the system client sync provides backend synchronization for syncing lender, rate, guideline and other product pricing and eligibility information to multiple backend servers and lender's specific system lender platforms.” *Id.* at 46. The Specification identifies certain data in the master database (Spec. ¶ 32), but nowhere describes an unconventional use of the master database or client sync.

Thus, the recited “master database” and “client sync,” even if they were considered “additional elements,” are insufficient to transform the claims into a patent-eligible application.

Thus, on this record, Appellant has not shown integration into a practical application under the guidance of Manual of Patent Examining Procedure section 2106.05(a) (“Improvements to the Functioning of a Computer or to Any Other Technology or Technical Field”) or section 2106.05(e) (“Other Meaningful Limitations”). Nor has Appellant advanced any arguments in the Brief(s) that are directed to the *Bilski* machine-or-

transformation test, which would only be applicable to the method (process) claims on appeal. *See* MPEP §§ 2106.05(b) (Particular Machine) and 2106.05(c) (Particular Transformation).

Therefore, we conclude the abstract idea is not integrated into a practical application, and thus the claim is directed to the judicial exception.

Step 2B – “Inventive Concept” or “Significantly More”

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the “inventive concept” step. For *Step 2B* we must “look with more specificity at what the claim elements add, in order to determine ‘whether they identify an “inventive concept” in the application of the ineligible subject matter’ to which the claim is directed.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (Fed. Cir. 2016) (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

Here we must “determine whether the claims do significantly more than simply describe [the] abstract method” and thus transform the abstract idea into patentable subject matter. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). We look to see whether there are any “additional features” in the claims that constitute an “inventive concept,” thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 573 U.S. at 221. Those “additional features” must be more than “well-understood, routine, conventional activity.” *Mayo*, 566 U.S. at 79.

Limitations referenced in *Alice* that are not enough to qualify as “significantly more” when recited in a claim with an abstract idea include, as non-limiting or non-exclusive examples: adding the words “apply it” (or an

equivalent) with an abstract idea⁸; mere instructions to implement an abstract idea on a computer⁹; or requiring no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.¹⁰

Evaluating representative claim 1 under step 2B, we conclude it lacks an inventive concept that transforms the abstract idea of a certain method organizing human activity into a patent-eligible application of that abstract idea. In addition to the conventional description of the “master database” and “client sync” described above, it is well-settled that a claimed invention’s “use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a new abstract idea is still an abstract idea.”).

The Specification describes the additional element “consumer data entry point device,” which is operatively coupled, via a network, to one or more servers, as follows:

the consumer data entry point devices 112 can be conventional cellular telephones, conventional cable set top boxes, gaming consoles, digital video recording devices or handheld devices for sending and receiving information over a communication network such as a conventional cellular telephone network or cable network connected to the Internet.

⁸ *Alice*, 573 U.S. at 221–23.

⁹ *Alice*, 573 U.S. at 221, *e.g.*, simply implementing a mathematical principle on a physical machine, namely a computer (citing *Mayo*, 566 U.S. at 84–85).

¹⁰ *Alice*, 573 U.S. at 225, *e.g.*, using a computer to obtain data, adjust account balances, and issue automated instructions.

Spec. ¶ 18.

Because the Specification describes the additional element in general terms, without describing the particulars, we conclude the claim limitation may be broadly but reasonably construed as reciting conventional computer components and techniques, particularly in light of Appellant’s Specification, as quoted above.¹¹

With respect to this step of the analysis, Appellant argues that “[t]he claims do not set forth an idea and merely instruct one to ‘apply it on computer’ but rather provides detailed limitations explaining a specific architecture and sequence off communications for how the improved online web quoting system can be achieved.” App. Br. 16.

In response, we note the Supreme Court emphasizes, “[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.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (emphasis added). Our reviewing court further guides that “[e]ligibility and novelty are separate inquiries.” *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017); *see also Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1263 (Fed. Cir. 2016) (holding that “[e]ven assuming” that a particular claimed feature was novel does not “avoid the problem of abstractness”).

¹¹ Claim terms are to be given their broadest reasonable interpretation, as understood by those of ordinary skill in the art and taking into account whatever enlightenment may be had from the Specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

With respect to the *Step 2B* analysis, we conclude, similar to *Alice*, the recitation of a system that includes a “consumer data entry point device,” which is operatively coupled, via a network, to one or more servers, is simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention under *Step 2B*. *See Alice*, 573 U.S. at 221 (“[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.”).

Therefore, because the claims fail to satisfy both the *Step 2A* and *Step 2B* analyses, we sustain the Examiner’s § 101 rejection of independent claims 1 and grouped claims 2–5, 7–21, 23–29, and 31–33, not argued separately, and which fall therewith. *See Claim Grouping, supra*.

CONCLUSION

Claims 1–5, 7–21, 23–29, and 31–33 under 35 U.S.C. § 101 are directed to patent-ineligible subject matter, and we sustain the rejection.

DECISION

We affirm the Examiner’s decision rejecting claims 1–5, 7–21, 23–29, and 31–33.

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