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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN LABUSZEWSKI, JOHN NYHOFF, DAVID BOBERSKI, MIKE KAMRADT, ROBERTA PAFFARO, EDWARD GOGOL, JOHN WILEY, RICHARD CO, and STEVE YOUNGREN

Appeal 2018-004183
Application 15/079,760
Technology Center 3600

Before CARL W. WHITEHEAD JR., JOSEPH P. LENTIVECH, and MICHAEL M. BARRY, *Administrative Patent Judges*.

LENTIVECH, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the Patent Trial and Appeal Board's ("Board") Decision mailed May 28, 2019 ("Decision"), in which we affirmed the rejection of claims 1–23 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

ANALYSIS

In the Request for Rehearing ("Req."), Appellants allege "the Board has misapprehended the application of the broadest reasonable interpretation standard or otherwise overlooked other limitations of Appellant[s'] claims which, in combination, contextualize and differentiate the referenced limitations and the claim as a whole from the subject matter of the cases relied upon by the Board." Req. 2. Appellants argue that, with respect to the limitation

> assigning, automatically by the payment processor based on the first position in the first instrument held by the first trader to which the second trader is a counterparty, a second position to the first trader in a futures contract characterized by a settlement date, a quantity and a price, the second position being characterized by a value based on the quantity and the price of the futures contract as of the assigning, and a third position to the second trader, counter to the second position, in the futures contract, the first and second traders not being identified to each other,

recited in claim 1, "the Board has misapprehended the application of the broadest reasonable interpretation standard or otherwise overlooked other limitations of Appellant[s'] claims which, in combination, contextualize and differentiate the referenced limitations and the claim as a whole from the subject matter of the cases relied upon by the Board." Req. 2. Appellants argue this process "is a novel process by which a risk management system is co-opted into making a pre-defined payment, something it could not do before." Req. 3.

Appellants' arguments are not persuasive. Appellants' Specification and claims do not describe technological improvements or specific improvements to the way computers operate. Rather, Appellants'

Specification and claims describe techniques for "moving money between accounts of traders by a central counterparty to facilitate payments, i.e. the movement of funds, there between is disclosed which provides a flexible mechanism which supports simpler accounting, new types of derivatives contracts as well as new types of fees." Spec. ¶ 10. As we found in the Decision:

> This limitation, as drafted, is a process that, under its broadest reasonable interpretation is a fundamental economic practice similar to risk the intermediated settlement in *Alice* (*see Alice*, 573 U.S. at 218–19), verifying credit card transactions in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011), and guaranteeing transactions in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014). As such, the claims recite a fundamental economic practice—i.e., certain methods of organizing human activity found to be an abstract idea. *See* Memorandum, 84 Fed. Reg. at 54–55.

Decision 8. Further, we note that, but for the recitation of "automatically by the payment processor," this limitation can be performed in the human mind or by a person using pen and paper. Thus, this limitation also recites a mental process. *See* Memorandum, 84 Fed. Reg. at 52.

Appellants further contend "the Board has misapprehended or otherwise overlooked the applicability of Prong Two of the USPTO's Revised Patent Subject Matter Eligibility Guidance, i.e. whether the claim recites additional elements that integrate the judicial exception into a practical application." Req. 3. Appellants argue:

> Here, the current claims are integrated into a practical application of enabling a margin management system of an electronic trading system to do something it could not do before, indirectly move a pre-defined monetary value among accounts of traders, specifically within the environment of a central counter-

> party based trading system where, due to the novation by the central counter-party in any transaction, direct movement of value between accounts is not permitted. The claimed invention improves upon the technical field of anonymized data and transaction processing by providing a system which efficiently facilitates the necessary crediting and debiting of accounts to indirectly effect a transfer therebetween and which leverages, in a novel and specific manner, existing risk management systems/techniques. Further, the system accomplishes these goals while maintaining anonymity between the payor and payee.

Req. 4 (citing Spec. ¶¶ 11, 12, 18, 19). Appellants further argue the claims

> do not attempt to monopolize the idea but rather only the improvement as applied to a specific technology, that of risk management mechanisms of electronic trading systems which implement electronic trading, in a specific implementation which has NOT been used before and therefore is not well understood, routine or conventional in the art.

Req. 4.

We do not find Appellants' arguments persuasive. Appellants fail to identify the additional limitations recited in the claim to which they refer or to explain how these additional limitations integrate the recited abstract ideas into a practical application thereof. To the extent Appellants simply reiterate the same arguments made in the Appeal Brief (*see* App. Br. 6), which the Board found unpersuasive (*see* Decision 12–13), we emphasize that a request for rehearing "must state with particularity the points believed to have been misapprehended or overlooked by the Board" and "must specifically recite 'the points of law or fact which appellant feels were overlooked or misapprehended by the Board.'" *Ex parte Quist*, 95 USPQ2d 1140, 1141 (BPAI 2010) (precedential) (quoting MPEP § 1214.03). Here, Appellants have not specifically pointed out any points overlooked or

misapprehended by the Board in its Decision, but are merely reiterating the previously made arguments that we found unpersuasive.

Appellants further contend the limitations:

> assigning, automatically by the payment processor based on the first position in the first instrument held by the first trader to which the second trader is a counterparty, a second position to the first trader in a futures contract characterized by a settlement date, a quantity and a price, the second position being characterized by a value based on the quantity and the price of the futures contract as of the assigning, and a third position to the second trader, counter to the second position, in the futures contract, the first and second traders not being identified to each other;
>
> valuing, by a settlement processor upon occurrence of the settlement date, the futures contract at a spot value different from the price of the futures contract, the spot value being based on the determined payment amount; and
>
> modifying, by a margin processor, a first account record associated with the first trader and a second account record associated with the second trader, both stored in an account database stored in a memory coupled with the processor, to reflect a credit to the account of the first trader and a debit from the account of the second trader in the amount of the difference between the value of the second position and the spot value when the difference represents a loss for the second trader or to reflect a debit from the account of the first trader and a credit to the account of the second trader in the amount of the difference between the value of the second position and the spot value when the difference represents a loss for the first trader,

recited in claim 1, "recite additional elements integrating the abstract [] idea or fundamental economic practice into a practical application under Step 2A, Prong 2." Req. 5. Appellants argue "these are not operations which generally occur when analyzing the risk of a portfolio of derivative

products" but, instead, "quite the opposite occurs when analyzing [the] risk." *Id.*

We do not find Appellants' arguments persuasive. Although Appellants argue the claims recite additional elements integrating the abstract idea into a practical application (Req. 5), Appellants fail to identify the additional elements or explain how these additional elements integrate the recited abstract ideas into a practical application thereof. Further, the claimed improvements to analyzing the risk of a portfolio of derivative products are improvements to a business process and are not a technical solution to a technical problem as required by *DDR Holdings*. *See DDR Holdings, LLC v. Hotels.com, L.P.,* 773 F.3d 1245, 1257 (Fed. Cir. 2014). As we explained in the Decision:

> Appellants' argument does not explain how either the problem or solution are technical. Unlike the claims at issue in cases such as *DDR* (*see DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (Claims at issue are "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.")) and *Enfish* (*see Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016) (Claims at issue are "directed to a specific implementation of a solution to a problem in the software arts.")), the claims here merely address a business challenge through the use of generic, computer-related recitations that do not add meaningful limitations to steps otherwise directed to an abstract idea.

Decision 12–13.

We are also not persuaded by Appellants' argument that the claims are similar to the claims in *Ex parte Smith*, Appeal No. 2018-000064 (PTAB 2019) (Informative). Req. 6–7. In this regard, Appellants argue "the automated assignment of positions based on a predefined value and

subsequent operations to credit/debit that value are just as technological as delaying execution with a timer and used to improve prior trading systems." Req. 7 (internal citation omitted). Appellants present no argument or evidence explaining why or how "the automated assignment of positions based on a predefined value and subsequent operations to credit/debit that value are just as technological as delaying execution with a timer and used to improve prior trading systems." Therefore, Appellants' arguments are unpersuasive. *See* 37 CFR § 41.37(c)(1)(iv) ("The arguments shall explain *why the examiner erred* as to each ground of rejection contested by [A]ppellant.") (emphasis added); *cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an [A]ppellant, looking for nonobvious distinctions over the prior art.").

Appellants also contend "the claims do not merely seek to practice a fundamental economic principle using a computer." Req. 7. Appellants argue:

> The instant case differs from *FairWarning* [*IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016)] because the claimed invention does not use a computer in the computer's ordinary capacity to make the computations faster but rather enables the computer to do something it could do before by using the recited claimed processes and respective execution of software itself-not from the computer being used as a tool.

Id. (emphasis added).

Appellants' arguments are not persuasive. As we explained in the Decision:

> It is well-settled that placing an abstract idea in the context of a computer does not improve the computer or convert the idea into a patent-eligible application of that idea. *See Alice*, 573 U.S. at

> 222–24. While the claims require various processors and a memory, it is clear, from the claims themselves and the Specification, that these limitations require no improved computer resources Appellants claim to have invented, just already available computers, with their already available basic functions, to use as tools in executing the claimed process.

Decision 15 (citing Spec. ¶¶ 138–39).

CONCLUSION

In view of the foregoing, we are not persuaded of reversible error in the Examiner's rejection, or that we misapprehended or overlooked any points of law or fact in rendering our Decision. We therefore deny the Appellants' request to modify our Decision and the Examiner's rejection remains affirmed.

DECISION

Although we have reconsidered certain aspects of our original Decision in light of the Appellants' arguments, we decline to modify our original Decision.

DENIED