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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 11/011,883 | 12/13/2004 | Michael Gooch | 03-2438US | 6624 |

63710 7590 10/07/2019

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|---|
| POLLOCK, GREGORY A |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3695 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 10/07/2019 | ELECTRONIC |

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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* MICHAEL GOOCH and MICHAEL EVERAERT

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Appeal 2018-004639
Application 11/011,883[1]
Technology Center 3600

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Before ALLEN R. MacDONALD, MICHAEL J. ENGLE, and IFTIKHAR AHMED, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 6–31, 33, 34, 36–41, 46–58, and 60–68, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

*Technology*

The application relates to "providing integrated credit derivative brokerage services," including a "Trade Management Service (TMS) Application Programming Interface (API)." Spec. 2:11–13.

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[1] According to Appellants, the real party in interest is GFI Group, Inc. App. Br. 3.

*Illustrative Claim*

Claim 1 is illustrative and reproduced below with certain limitations at issue emphasized:

> 1. A computer network system providing integrated credit derivative brokerage services, comprising:
>
> a computer network system, which provides integrated credit derivative brokerage services, including a network arrangement having internet access, the network arrangement including:
>
> a credit default swap (CDS) module providing trading, trade capture, confirmations, maintenance of reference data, and reporting, the CDS arrangement including a CDS database (CDS DB), and the CDS module includes *a workspace configured to organize logically market and product data*, a price sheet configured to group together related products within the workspace, a trade log configured to display trading details, an order book configured to display and manage at least one of open and cancelled orders, and a trader's eye function configured to display the market from the perspective of a specific trader;
>
> a credit market portal module providing a customer front end of real-time credit market data, and providing a historical reporting and search facility to at least one of brokers and traders;
>
> a credit market mart module providing a credit data mart disseminating realtime credit market data, the credit mart arrangement serving as a data source of the credit market portal module, which provides a customer-facing front end to access real-time credit market data;
>
> a credit editor module providing a data-cleansing interface to the credit market mart module accessed via the credit market portal module;
>
> a credit trading capture (CTC) module, having an associated back-end CTS database (CTS DB), providing

order management and an authoritative source of realtime, electronic orders of credit default swaps for the CDS module;

a credit trade capture (CTC) system module providing a middle-office trade capture and confirmation system;

a data depot (DD) module centrally storing all of the credit market data; and

a market data processor (MDP) module that collects, transforms, and formats the market data, wherein the MDP is a trade management service (TMS) client and a price broadcast service (PBS) client;

wherein each of the modules includes a computer program which is stored on a non-transitory computer readable medium and which is executable by at least one computer in the network arrangement;

wherein to create the trade, the system is configured to look up a factory class, invoke the factory class to instantiate a manager class, and invoke the manager class with trade data to perform the trade creation,

wherein the system is configured to query at least one of an individual trade and a collection of trades using the trade management service module, and

wherein to query at least one of the individual trade and the collection of trades, the system is configured to look up a factory class, invoke the factory class to instantiate a manager class, invoke the manager class to instantiate a query manager class, and invoke the query manager class to perform a trade query for pending data regarding the at least one of the individual trade and the collection of trades.

*Rejections*

Claims 1, 6–31, 33, 34, 36–41, 46–58, and 60–68 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter without significantly more. Final Act. 4.

Claims 1, 38, and 68 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Final Act. 3.

ISSUES

1. Did the Examiner err in concluding that claim 1 was directed to patent-ineligible subject matter without significantly more under § 101?

2. Did the Examiner err in finding "a workspace configured to organize logically market and product data" as recited in claim 1 lacks sufficient written description under § 112?

ANALYSIS

*§ 101: Subject Matter*

The Supreme Court has "long held that [§ 101] contains an important implicit exception" that "[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) (quotation omitted). To determine patentable subject matter, the Supreme Court has set forth a two-part test.

"First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts" of "laws of nature, natural phenomena, and abstract ideas." *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). "The inquiry often is whether the claims are directed to 'a specific means or method' for improving technology or whether they are simply directed to an

abstract end-result." *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017). A court must be cognizant that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas" (*Mayo*, 566 U.S. at 71), and "describing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Instead, "the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

If the claims are directed to an abstract idea or other ineligible concept, then we continue to the second step and "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." *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78). The Supreme Court has "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." *Id.* at 217–18 (quotation omitted).

The U.S. Patent & Trademark Office recently published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Revised Guidance"). Under the Revised Guidance, we look to whether the claim recites

(1) a judicial exception, such as a law of nature or any of the following groupings of abstract ideas:
   (a) mathematical concepts, such as mathematical formulas;
   (b) certain methods of organizing human activity, such as a fundamental economic practice; or
   (c) mental processes, such as an observation or evaluation performed in the human mind;
(2) any additional limitations that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)); and
(3) any additional limitations beyond the judicial exception that, alone or in combination, were not "well-understood, routine, conventional" in the field (*see* MPEP § 2106.05(d)).

*See* Revised Guidance 52, 55, 56. Under the Revised Guidance, if the claim does not recite a judicial exception, then it is eligible under § 101 and no further analysis is necessary. *Id.* at 54. Similarly, under the Revised Guidance, "if the claim as a whole integrates the recited judicial exception into a practical application of that exception," then no further analysis is necessary. *Id.* at 53, 54.

"Eligibility under 35 U.S.C. § 101 is a question of law, based on underlying facts." *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018).

*A) USPTO Step 2A, Prong 1*

Step 2A, Prong 1 of the Revised Guidance asks "whether the claim recites a judicial exception." Revised Guidance 54. "To determine whether a claim recites an abstract idea in Prong One, examiners are now to

(a) Identify the specific limitation(s) in the claim under examination (individually or in combination) that the examiner believes recites an abstract idea; and (b) determine whether the identified limitation(s) falls within the subject matter groupings of abstract ideas enumerated in Section I of the [Revised Guidance]." *Id.*

Here, the Examiner determines that "the claims are directed toward providing a marketplace for trading credit default swaps and other financial instruments" and that such trading is "a fundamental economic practice" "using categories to organize, store, and transmit information." Final Act. 6.

Appellants concede that "the present claims and some of [the] cited cases may involve elements related to economics and/or trading to some degree," but Appellants cite to *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017) (non-precedential), as proof that not all claims "related to trading or economics are abstract without more." App. Br. 9.

Claim 1 recites "a computer network system, which provides integrated credit derivative brokerage services," including (1) "a credit market portal module providing a customer front end of real-time credit market data" and (2) "a credit default swap (CDS) module providing trading, trade capture, confirmations, maintenance of reference data, and reporting" in which "the CDS module includes a workspace configured to organize logically market and product data." Thus, claim 1 recites a graphical user interface for trading credit default swaps.

The Specification similarly explains under "FIELD OF THE INVENTION" that "[t]he present invention relates to a method and system

for providing integrated credit derivative brokerage services." Spec. 2:11–13. Under "SUMMARY OF THE INVENTION," the Specification states:

> An exemplary method and system of the present invention is for providing electronic-based credit trading that integrates pre-trade, trading, and post-trade activities and enables brokers, for example, to enter and display quotes, manage their traders' order portfolios, investigate market depth, and execute transactions for any available entity or interest using, for example, feeds to/from analytic calculators, trader spreadsheets, electronic confirmations, and other accounting platforms.

Spec. 3:5–10.

For Prong 1, we agree with the Examiner that the claims at least recite certain methods of organizing human activity, specifically an interface for a fundamental economic practice of trading. *See* Revised Guidance 52. The recent precedential decision in *Trading Technologies International, Inc. v. IBG LLC*, 921 F.3d 1084 (Fed. Cir. 2019), is instructive. That case involved, in part, "a user interface for an electronic trading system that allows a remote trader to view trends in the orders for an item, and provides the trading information in an easy to see and interpret graphical format." *Id.* at 1087 (quotation omitted). Under *Alice* Step 1, the Federal Circuit agreed with the Board that the claims were "directed to the abstract idea of graphing (or displaying) bids and offers to assist a trader to make an order" and "placing an order based on displayed market information is a fundamental economic practice." *Id.* at 1092 (quotation omitted). "The fact that the claims add a degree of particularity as to how an order is placed in this case does not impact our analysis at step one." *Id.* The same is true here. Given that the Federal Circuit held the claims for a trading interface in *Trading Technologies v. IBG* were *directed to* an abstract idea, the claims for a trading interface here at least *recite* an abstract idea.

Thus, consistent with case law, the Revised Guidance, and the Specification, we conclude that the claims recite certain methods of organizing human activity, which constitute an abstract idea.

*B) USPTO Step 2A, Prong 2*

We next turn to "whether the claim as a whole integrates the recited judicial exception into a practical application." Revised Guidance 54. "Examiners evaluate integration into a practical application 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." *Id.* at 54–55.

Here, outside of the abstract idea, claim 1 further recites "to create the trade, the system is configured to look up a factory class, invoke the factory class to instantiate a manager class, and invoke the manager class with trade data to perform the trade creation," and "to query at least one of the individual trade and the collection of trades, the system is configured to look up a factory class, invoke the factory class to instantiate a manager class, invoke the manager class to instantiate a query manager class, and invoke the query manager class to perform a trade query for pending data regarding the at least one of the individual trade and the collection of trades."

In this respect, the claims are more analogous to Appellants' cited case of *Trading Technologies v. CQG*, in which "the challenged patents do not simply claim displaying information on a graphical user interface" but rather "require a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface's

structure." 675 F. App'x at 1004. "[S]pecific technologic modifications to solve a problem or improve the functioning of a known system generally produce patent-eligible subject matter." *Id.* at 1004–05.

The claims here recite a specific arrangement of classes and the invocation or instantiation of those classes that integrates the judicial exception into a practical application. Put another way, even though the claims *recite* an abstract idea, the claims are not *directed to* that abstract idea because they *also* recite a specific technical process (e.g., invoking or instantiating particular classes). *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016) ("The Supreme Court has recognized that all inventions embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas. But not all claims are *directed to* an abstract idea." (quotation omitted)).

To be clear, we make no holding as to whether the claims are novel under § 102, are non-obvious under § 103, or involve means-plus-function "modules" under § 112, as those are separate inquiries under patent law. *E.g.*, *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 determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter."). However, solely for purposes of § 101, we hold that the claims here include significantly more than the abstract idea.

Accordingly, we do not sustain the Examiner's rejection of claims 1, 6–31, 33, 34, 36–41, 46–58, and 60–68 under § 101.

*§ 112: Written Description*

All of the independent claims (1, 38, and 68) recite "a workspace configured to organize logically market and product data."

The Examiner finds that this limitation lacks written description support under § 112. Final Act. 3. The Specification discloses that "workspaces . . . are work areas within which a *user* may logically organize the markets and products that they want to work with." Spec. 30:9–10 (emphasis added); *see also id.* at 14:1–2, 31:29–30 (similar). The Examiner relies on these disclosures in finding that "[t]he workspaces do not perform the task of organizing logically" but rather "the disclosure describes a system where workspaces may be provided so that users may logically organize." Ans. 7.

However, the Specification also discloses that "the credit trading arrangement includes a workspace to organize logically market and product data," without mentioning the user. Spec. 6:33–7:1. Moreover, we note that the claims do not limit who or what does the configuring of the workspace, such as a workspace configured automatically versus configured by a user.

Accordingly, we do not sustain the Examiner's rejection of claims 1, 38, and 68 under § 112.

DECISION

For the reasons above, we reverse the Examiner's decision rejecting claims 1, 6–31, 33, 34, 36–41, 46–58, and 60–68.

REVERSED