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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BOB LAMOUREUX, PAUL JAMINET, ALEXIS KOPIKIS, and
ZENOBIA MOOCHHALA

Appeal 2018-004646
Application 14/089,081
Technology Center 3600

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

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL¹

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–10, 19–24, 27, and 29–33. Appellants have cancelled claims 11–18, 25, 26, and 28. App. Br. Claim Appendix 3–5. We have jurisdiction under 35 U.S.C. § 6(b).²

¹ Appellants indicate the real party in interest is Thomson Reuters Global Resources. App. Br. 2.

² All MANUAL OF PATENT EXAMINING PROCEDURE (MPEP) citations herein are to MPEP 9th Edition, Rev. 08.2017 (Jan. 2018).

Illustrative Claim

Illustrative claim 1 under appeal reads as follows (emphasis, format, and bracketed material added):

1. A networked commercial interaction management method comprising the steps of:
 - [A.] storing, by at least one aggregation server, a profile for a user including a set of values for a plurality of information fields characterizing the networked commercial interactions associated with the user,
 - [i.] the profile associated with a variable relationship level defining an amount of access available to a recipient of received information bundles,
 - [ii.] the profile accessible to at least one other user of the network;
 - [B.] receiving, by a processing platform, said processing platform comprising at least one connection point for interactions with infrastructure services and applications, information bundles from different networked users in a same machine-readable format,
 - [i.] wherein the machine-readable format includes values for the plurality of information fields characterizing commercial interactions associated with the different networked users,
 - [ii.] wherein the profile for each different networked user is associated with a variable relationship level, defining an amount of access available to received information bundles;
 - [C.] updating the profile for each different networked user based on a communication between the processing platform and the at least one aggregation server;
 - [D.] transmitting the information bundles from the different networked users to the aggregation server;

- [E.] processing, the machine-readable format including the values for the plurality of information fields in the information bundles, said processing comprising:
 - [i.] automatically determining the values for the plurality of fields for the bundles conforming to the values for the plurality of fields for the profile ***based on the variable relationship level***, and
 - [ii.] at least one of
 - [a.] ***adding values for the plurality of fields for the bundles***,
 - [b.] ***deleting one or more of the values for the plurality of fields for the bundles or***
 - [c.] ***replacing one or more of values for the plurality of fields for the bundles based on the variable relationship level***; and
- [F.] presenting to the user, at least parts of the information bundles from the different networked users the values for the plurality of fields for the bundles conforming to the values for the plurality of fields for the profile based on the variable relationship level.

Rejection on Appeal

The Examiner rejected claims 1–10, 19–24, 27, and 29–33 under 35 U.S.C. § 101 “because the claimed invention is directed to a judicial exception (abstract idea) without significantly more,” i.e., because the claimed invention is directed to patent-ineligible subject matter. Final Act. 2. Separate patentability is not argued for claims 2–10, 19–24, 27, and 29–33. Therefore, we select independent claim 1 as representative. Except for our ultimate decision, we do not discuss the § 101 rejection of claims 2–10, 19–24, 27, and 29–33 further herein.

Issue on Appeal

Did the Examiner err in rejecting claim 1 as being directed to patent-ineligible subject matter?

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments (Appeal Brief and Reply Brief) that the Examiner has erred.

1. *Principles of Law*

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. 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. *E.g., Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

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*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). 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*, 561 U.S. 593, 611 (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*, 561 U.S. at 611); 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” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); 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 that “[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.* (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.”).

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 and quotation marks 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 United States Patent and Trademark Office (“USPTO”) recently published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (“2019 Guidance”). Under that guidance, we first look to whether the claim recites:

- (1) (*see* 2019 Guidance Step 2A – Prong One) 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) (*see* 2019 Guidance Step 2A – Prong Two) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).³

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 (*see* 2019 Guidance Step 2B):

³ We acknowledge some of these considerations may properly be evaluated under Step 2 of *Alice* (Step 2B of Office guidance). To maintain consistent treatment within the Office, we evaluate them under Step 1 of *Alice* (Step 2A of the 2019 Guidance). *See* 2019 Guidance.

- (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 2019 Guidance.

2. *The Examiner’s Determination and Appellants’ Contentions*⁴

Applying step one of the *Alice/Mayo* analysis, the Examiner determines:

[T]he claim recites collecting information, analyzing the information, comparing and formatting information for presentation. It is similar to other concepts that have been identified as abstract by the courts, such as collecting information, analyzing it, and displaying certain results of the collection and analysis in *Electric Power Group*, or obtaining and comparing intangible data in *CyberSource*. Therefore, the claim is directed to an abstract idea.

Final Act. 2–3.

Applying step two of the *Alice/ Mayo* analysis, the Examiner determines:

The claim recites the additional limitations of using a computer processor[] with a memor[y] that stores profile of users and computer instructions that perform the generic functions of processing and formatting information for presentation. The computer processor is ***recited at a high level of generality*** and its broadest reasonable interpretation comprises only a microprocessor, memory and transmitter to simply perform the

⁴ The contentions we discuss herein are determinative as to the § 101 rejection on appeal. Therefore, we do not discuss Appellants’ other § 101 contentions herein.

generic computer functions of receiving, processing and transmitting information. Generic computers performing generic computer functions, alone, do not amount to significantly more than the abstract idea. Finally, the network limitation are simply a field of use that is an attempt to limit the abstract idea to a particular technological environment and, so do not add significantly more. Viewing the limitations as an ordered combination does not add anything further than looking at the limitations individually. When viewed either individually, or as an ordered combination, the additional limitations do not amount to a claim as a whole that is significantly more than the abstract idea (Step 2B: NO).

Final Act. 3.

Appellants contend:

[T]he Examiner wrongly contends that “the claim recites collecting information, analyzing the information, comparing and formatting information for presentation” and finds that “this is similar to other concepts that have been identified as abstract by the courts.” (Final Office Action at p. 2). Respectfully, however, the Examiner has oversimplified the claim and its limitations.

App. Br. 10.

Applicant submits the present claims, are also similar to those at issue in [*McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016)], in that the present claims are directed to the incorporation of the claimed “rules with specific characteristics” *McRo*, at 21, (i.e., “. . . automatically determining the values for the plurality of fields for the bundles conforming to the values for the plurality of fields for the profile based on the variable relationship level, and at least one of adding values for the plurality of fields for the bundles, deleting one or more of the values for the plurality of fields for the bundles or replacing one or more of values for the plurality of fields for the bundles based on the variable relationship level . . . ”[.]) *McRo*, at 24.

App. Br. 12–13 (emphasis omitted).

3. *Our Analysis*

Our decision to reverse the Examiner on the 35 U.S.C. § 101 rejection discusses only those issues necessary for our conclusion. We agree with Appellants that the Examiner errs in the 35 U.S.C. § 101 rejection because, as discussed below, on the record before us, we determine claim 1 recites limitations that integrate the abstract idea(s) recited by the claim into a patent-eligible application.

3.a. *Alice/Mayo Step One*

To be clear, consistent with its preamble, claim 1 includes limitations reciting “commercial interaction management.” For example, claim 1 recites a series of steps performed on “a set of values for a plurality of information fields characterizing the networked commercial interactions.” Thus, claim 1 recites, at least in part, the idea of managing commercial interactions. Commercial interactions are a fundamental economic practice, which is one of certain methods of organizing human activity. *See, e.g., buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (holding that the concept of “creating a contractual relationship—a ‘transaction performance guaranty’” is an abstract idea).

However, in terms of our ultimate conclusion as to whether claim 1 is directed to a patent-ineligible abstract idea at step one of *Alice/Mayo*, we must not express the idea to which the claim is directed in a way that is “untethered from the language of the claims.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). In particular, when we assess what the claims are directed to, we must do so at the same level of generality or abstraction expressed in the claims themselves. *Id.*; *see also McRO*, 837 F.3d at 1313 (cautioning to “‘be careful to avoid oversimplifying the claims’

by looking at them generally and failing to account for the specific requirements of the claims” (quoting *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016))). Thus, we look to whether: (1) the claims focus on a specific means or method that improves the relevant technology or (2) the claims are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. See *Enfish*, 822 F.3d at 1335–36 (Fed. Cir. 2016). That is, we look to whether the claims are “specifically designed to achieve an improved technological result in conventional industry practice.” *McRO*, 837 F.3d at 1316; see also *Alice*, 573 U.S. at 223 (explaining that a claim reciting use of a generic computer along with other ineligible subject matter nevertheless was patent eligible because the claim employed those limitations “in a process designed to solve a technological problem in ‘conventional industry practice’” (quoting *Diehr*, 450 U.S. at 178)).

3.b. *Alice Mayo Step One, 2019 Guidance Prong Two*

Thus, in accordance with the 2019 Guidance, as part of our *Alice/Mayo* step one analysis, we consider whether claim 1, which recites the patent-ineligible abstract idea of commercial interaction management, is directed to a practical application, such that the claim is *not* patent-ineligibly directed to an abstract idea. See 2019 Guidance 54–55. Here, Appellants identify “[t]he improvement is the versatile sharing and incorporating of information between users (i.e., determining the values for the plurality of fields for the bundles) over a network based in part on a variable relationship level to ensure relevant flow of information.” App. Br. 13.

Claim 1 recites limitations directed to this improvement, such as “adding,” “deleting,” and “replacing” recited in claim 1 above at E.ii.a.–

E.ii.c. The Examiner treats these claim 1 limitations as “performing generic computer functions.” Final Act. 3. We disagree. Although the limitations in claim 1 are not as specifically recited as the claims reviewed in *Trading Techs. Int’l, Inc. v. CQG, INC.*, 675 F. App’x 1001 (Fed. Cir. 2017), neither are they recited as “conventional steps, specified at a high level of generality.” *Alice*, 573 U.S. at 222. The Examiner’s analysis cites to a number of Federal Circuit decisions (e.g., *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016) and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1368 (Fed. Cir. 2011) (Final Act. 3)), but fails to explain how these decisions are relevant to these particular claim 1 limitations. Therefore, on the record before us, we determine that the Examiner’s articulated reasoning is insufficient, and we reverse the Examiner’s rejection on procedural grounds.

Furthermore, at step one of the *Alice/Mayo* analysis, on this record, we conclude claim 1 is directed to a practical application for commercial interaction management. On its face, without further articulated reasoning from the Examiner, claim 1 is more akin to the claims at issue in *Trading Techs. Int’l, Inc. v. CQG, INC.*, where the Federal Circuit determined claims that recited electronic trading of commodities were patent-eligible because they were directed to improvements in existing GUIs that had no pre-electronic trading analog. See 675 F. App’x at 1003–05 (citing, *inter alia*, *DDR Holdings, McRO*, and *Enfish*); see also *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1359–60, 1362–63 (Fed. Cir. 2018) (determining at *Alice/Mayo* step one “[t]he asserted claims in this case are directed to an improved user interface for computing devices, not to the abstract idea”); see also *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299,

1305 (Fed. Cir. 2018) (holding the claims at issue were “directed to a non-abstract improvement in computer functionality, rather than the abstract idea).

Absent further analysis by the Examiner, we are constrained to conclude that claim 1 focuses on (and is directed to) a specific means to improve technology for commercial interaction management, i.e., it is not directed to a result or effect that itself is the abstract idea while merely invoking generic technological limitations. *Enfish*, 822 F.3d at 1335–36. Accordingly, we do not sustain the 35 U.S.C. § 101 rejection of claim 1.

CONCLUSIONS

(1) Appellants have established that the Examiner erred in rejecting claims 1–10, 19–24, 27, and 29–33 as being unpatentable under 35 U.S.C. § 101.

(2) Claims 1–10, 19–24, 27, and 29–33 have not been shown to be unpatentable.

DECISION

The Examiner’s rejection of claims 1–10, 19–24, 27, and 29–33 is reversed.

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).

REVERSED