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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* IRVING G. BAYSAH, JOHN S. DODSON,  
KARTHICK RAJAMANI, ERIC E. RETTER,  
SCOT H. RIDER, TODD JON ROSEDAHL,  
GREGORY SCOTT STILL, GARY VAN HUBEN, and  
MALCOM S. ALLEN-WARE<sup>1</sup>

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Appeal 2018-004918  
Application 14/987,968  
Technology Center 2100

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Before BRADLEY W. BAUMEISTER, JON M. JURGOVAN, and  
JOHN R. KENNY, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–10 and 16–25. App. Br. 1 (cover sheet). These claims all stand rejected under 35 U.S.C. § 101 as being directed to a patent-ineligible abstract idea without reciting significantly more. Final Action 2–5, mailed May 17, 2017 (“Final Act.”). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> Appellants identify International Business Machines Corporation as the real party in interest. Appeal Brief 1 (second occurrence) filed Oct. 17, 2017 (“App. Br.”). The Appeal Brief numbers the cover sheet as page 1 and then restarts the numbering with page 1 again after the table of contents.

## THE INVENTION

Appellants describe the present invention as follows:

A system with a local data collector that collects power management data for a subsystem. The local data collector can determine whether a first formatting associated with a first channel between the local data collector and a system power management data collector is equivalent to a second formatting associated with a second channel between the local data collector and the system power management data collector, and in response to a determination that the first formatting and second formatting are not equivalent[,] format the power management data according to the first formatting; store the power management data formatted according to the first formatting in a first location in a memory; format the power management data according to the second formatting; and store the power management data formatted according to the second formatting in a second location the memory.

Abstract.

Independent claim 1, reproduced below, illustrates the claimed invention:

1. A method comprising:

collecting, by a local data collector on a controller for a subsystem, power management data for the subsystem, the controller communicably coupled to a processor having a system power management data collector, wherein the local data collector comprises a first logic unit on the controller and wherein the system power management data collector comprises a second logic unit of the processor;

determining, by the local data collector, whether a first formatting associated with a first channel between the local data collector and the system power management data collector is equivalent to a second formatting associated with a second channel between the local data collector and the system power management data collector;

in response to determining, by the local data collector, that the first formatting and second formatting are not equivalent:

formatting the power management data according to the first formatting,

storing the power management data formatted according to the first formatting in a first location in a memory,

formatting the power management data according to the second formatting, and

storing the power management data formatted according to the second formatting in a second location in the memory; and

selecting, by the system power management data collector, the first channel based, at least in part, on channel states of the first channel and the second channel; and

retrieving, by the system power management data collector, the power management data along the first channel in accordance with the first formatting.

#### PRINCIPLES OF LAW

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

Regarding the question of patent eligibility under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct.

2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). Accordingly, in applying the § 101 exception, the Supreme Court cautioned:

[W]e must distinguish between patents that claim the “buildin[g] block[s]” of human ingenuity and those that integrate the building blocks into something more, thereby “transform[ing]” them into a patent-eligible invention. The former “would risk disproportionately tying up the use of the underlying” ideas, and are therefore ineligible for patent protection. The latter pose no comparable risk of pre-emption, and therefore remain eligible for the monopoly granted under our patent laws.

*Alice*, 134 S. Ct. at 2354–55 (all brackets in original except first set) (internal citations omitted).

In *Alice*, the Supreme Court has set forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71–73 (2012)). In the first step of the analysis, we determine whether the claim at issue is “directed to” a judicial exception, such as an abstract idea. *Id.* at 2355. If not, the inquiry ends. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claim is determined to be directed to an abstract idea, then we consider under step two whether the claim contains an “inventive concept” sufficient to “transform the nature of the claim into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quotations and citation omitted).

In considering whether a claim is directed to an abstract idea under step one, we acknowledge, as did the Supreme Court, 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. We therefore look to whether the claim focuses on a specific means or method that improves the relevant technology or is instead directed to a result or effect that, itself, is the abstract idea and merely invokes generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

In the second step of the *Alice* analysis, if applicable, we must consider whether the claim contains an element or a combination of elements that is sufficient to transform the nature of the claim into a patent-eligible application. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014); *Alice*, 134 S. Ct. at 2355.

In applying step two of the *Alice* analysis, we must “determine whether the claim[] do[es] significantly more than simply describe [the] abstract method” and thus transform the abstract idea into patentable subject matter. We look to see whether there are any “additional features” in the claim[] that constitute an “inventive concept,” thereby rendering the claim[] eligible for patenting even if [it is] directed to an abstract idea. Those “additional features” must be more than “well-understood, routine, conventional activity.” *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1328 (Fed. Cir. 2017) (citations omitted). A claim that “merely require[s] generic computer implementation[] fail[s] to transform [an] abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2357.

Central to our analysis herein is the fundamental principle that the *Alice* framework must be applied to the claims, as properly construed. As our reviewing court has stated, “[t]he § 101 inquiry must focus on the language of the Asserted Claims themselves.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016); *see also Accenture*

*Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (admonishing that “the important inquiry for a § 101 analysis is to look to the claim”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1346 (Fed. Cir. 2014) (focusing on “whether the *claims* of the asserted patents fall within the excluded category of abstract ideas”) (emphasis added).

These principles are based on long-established jurisprudence that “[i]t is the claims [that] define the metes and bounds of the invention entitled to the protection of the patent system.” *In re Warmerdam*, 33 F.3d 1354, 1360 (Fed. Cir. 1994) (citing *Zenith Labs., Inc. v. Bristol–Myers Squibb Co.*, 19 F.3d 1418, 1424 (Fed. Cir. 1994)).

## CONTENTIONS

The Examiner determines that independent claims 1 and 6 are directed to an

abstract idea [that] is substantially similar to the court[-] identified abstract ideas of collecting information and analyzing it as found in [*Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)] and collecting and comparing known information[,] as found in [*Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011)].

Final Act. 3.

Appellants argue that the claims are not directed to an abstract idea because, *inter alia*, the focus of the claims is on a specific improvement in computer capabilities, and that the computer is not invoked merely as a tool to enact well-known business practices. App. Br. 12–13 (citing *Enfish*, 822 F.3d 1327). Appellants also argue that even if the claims reasonably can be characterized as being directed to an abstract idea under step one of *Alice*,

the claims still are patent eligible under step two of *Alice* because the claim elements, when viewed in combination as a whole, recite significantly more than an abstract idea. *Id.* at 14–15 (citing *BASCOM Global Internet Servs. Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)).

Both of these arguments are based on Appellants’ underlying position that “the claims are directed to improvements in processors and controllers that make the processors and controllers more efficient and ‘allows power management to operate in a dynamic system while satisfying the demands of timeliness for power management.’” App. Br. 15 (citing Spec. ¶ 12).

According to Appellants,

the pending claims provide an ordered combination of the claim elements that provide a technology-based solution to overcome existing problems with known systems, resulting in a claimed invention that improves the performance of a computer system comprising a processor and a controller. . . . [T]he present claims are an ordered combination of elements directed to efficiently handling power management data in a distributed system involving a processor and controllers. Power management data can be retrieved in a format and via a channel that is most efficient at a particular time interval. Thus, the claims recite an ordered combination of elements that provide a more efficient and dynamic processor and controller configuration than that provided by conventional processors and controllers.

*Id.* at 15.

The Examiner determines Appellants’ arguments to be unpersuasive, in part, because the Examiner determines that these arguments are not commensurate in scope with the claim language. *See, e.g.*, Answer 5–6, filed February 8, 2018 (“Ans.”). The Examiner instead determines that “[t]he claim language of both of [the terms “local data collector logic unit” and “power management logic unit”] has a high level of generality[,] which

leads to be able to broadly interpret the meaning of these [functional] blocks.” *Id.* at 7. The Examiner then determines that the claimed “first logic unit” and “second logic unit” merely read on software that performs a function that is implemented on a general purpose computer without adding significantly more. *Id.*

The Examiner also determines that “[t]he independent claims of this application do not realize the [Specification’s] disclosed advantages [of] ‘allow[ing] the power management to operate in a dynamic system while satisfying the demands of timeliness for power management.’” *Id.* at 8 (citing Spec. ¶ 12). The Examiner reasons, as follows:

First, the invention as recited in the claims only moves data from one location to another (collects, formats, selects and retrieves). It never applies the data gathered to the power management operation in a timely manner. Second, the Appellant’s argument that “allow a processor to select a channel to receive power management data from a controller in a manner and via a channel that is most efficient at the time interval during which the power management data is to be retrieved” [sic: “. . . is not commensurate is scope with the claim language”?]. First, nowhere in the claims is anything recited that requires the evaluation to be done within a certain time interval. Additionally, as discussed above, the efficiency is never realized in the claims. Therefore, the analysis of Enfish relied on the claims and the specification to find improvements in the functionality and capabilities of the computer, whereas the applicant’s claim appears to only about improving collection of data using the abstract ideas of collecting, determining, and selecting.

*Id.* at 8–9.

## ANALYSIS

We will assume, solely for the sake of argument, that the Examiner is correct in concluding all of the claims are directed to “the abstract ideas of collecting determining and selecting,” under step one of the *Alice* inquiry. However, this assumption does not address the separate question of whether the claim elements, when viewed in combination as a whole, recite significantly more than an abstract idea.

Claim 1, for example, specifically recites the steps of determining whether the data formats for first and second channels are equivalent, and then, in response to determining that they are not equivalent, performing the following two steps:

*“selecting, by the system power management data collector, the first channel based, at least in part, on channel states of the first channel and the second channel; and*

*retrieving . . . the power management data along the first channel in accordance with the first formatting.”*

Claim 1 (emphasis added). That is, independent claims 1 and 6 require that a computer perform the channel-selecting step.

So even if the step of selecting a communication channel generally is directed to an underlying abstract idea under step one of the *Alice* inquiry, the Examiner still must provide a factual basis for concluding under *Alice*'s step two that a computer performing this step constitutes the use of a general-purpose computer in a manner that was well-understood, routine, and conventional. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018) (“The question of whether a claim element or combination of elements is well-understood, routine, and conventional to a skilled artisan in the relevant field is a question of fact.”)

Furthermore, this requirement still exists even though the disputed selecting step is claimed as broadly as noted by the Examiner. Ans. 8–9. The fact that claim 1 does not recite the step as narrowly as argued by Appellants (*see, e.g.*, App. Br. 15) does not mean that the Examiner is relieved of all responsibility of providing a factual basis supporting the legal conclusion the Examiner reached in relation to the disputed limitation. It merely means that the Examiner’s factual basis needs to be commensurate in scope with the breadth of the computer functionality that actually is being claimed.

In the present case, the Examiner has not set forth a sufficient factual basis to support the conclusion that a computer selecting one of a plurality of communication channels based on the channels’ states constituted a well-understood, routine, and conventional computer function. *See* Final Act. 3, 5; Ans. 6–10.

Accordingly, we do not sustain the rejection under 35 U.S.C. § 101 of independent claims 1 and 6, which both recite a computer performing the noted selecting step. We likewise do not sustain the § 101 rejection of claims 2–5, 7–10, and 16–25, which depend from claims 1 or 6.

#### DECISION

The Examiner’s decision rejecting claims 1–10 and 16–25 is reversed.

REVERSED