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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YIMIN LIU, PERRY ROBINSON MACNEILLE and
OLEG YURIEVITCH GUSIKHIN

Appeal 2018-004927
Application 14/083,882
Technology Center 3600

Before JEAN R. HOMERE, CARL W. WHITEHEAD JR.,
and ADAM J. PYONIN, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 7, and 13, which constitute all claims pending in this application.¹ App. Br. 1. Claims 2–6, 8–12 and 14–18 have been canceled. App. Br., Claims Appx. 1–2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellants identify Ford Global Technologies, LLC, as the real party in interest. App. Br. 2.

Introduction

According to Appellants, the claimed subject matter relates to a vehicle network social grouping system including a plurality of vehicles (203, 205, 207, 209, and 211), each equipped with a vehicle computing system (VCS) for retrieving reviews relating to merchants, goods, and services shared within the network by fellow drivers according to driver designation of affiliation pre-stored in a data repository (215). Spec. ¶¶ 5, 55–56, and Fig. 2. In particular, upon a driver authoring a review, a list of driver-affiliated recipients is retrieved from the data repository to identify a recipient to whom the review is delivered when the recipient is available. *Id.*

Representative Claim

Claims 1, 7 and 13 are independent. Independent claim 1 is representative, and reads as follows:

1. A computer implemented method comprising:
providing a list of driver-affiliated users, based at least on a pre-stored driver designation of affiliation, whose vehicle computing system (VCS)-equipped vehicles are capable of receiving a driver input review;
receiving selection of a user;
receiving a review of a good or service from a driver;
attempting to deliver the review to a VCS of the selected user; and if the VCS of the selected user is unavailable for communication, determining that the VCS of the selected user has become available for communication and delivering the review to the available VCS.

Prior Art Relied Upon

Lewis et al. ("Lewis")	US 2007/0070931 A1	Mar. 29, 2007
Basir	US 2011/0121991 A1	May 26, 2011
Weiland	US 2011/0208617 A1	Aug. 25, 2011

Rejections on Appeal

Claims 1, 7, and 13 stand rejected under 35 U.S.C. §101 as being directed to patent ineligible material. Final Act. 2–5.

Claims 1, 7, and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Basir, Weiland, and Lewis. Final Act. 5–8.

ANALYSIS²

A. Patent Eligibility

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: “[I]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*

² We refer to Appellants’ arguments and the Examiner’s findings and conclusions set forth in the Final Action mailed April 21, 2017 (“Final Act.”); the Appeal Brief filed November 6, 2017 (“App. Br.”); the Answer mailed February 9, 2018, (“Ans.”); and the Reply Brief filed April 6, 2018, (“Reply Br.”) for the respective details.

and *Alice*. *Alice*, 573 U.S. 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, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*Diehr*, 450 U.S. at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 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 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 176, 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*), and 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. “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.* (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 on the application of section 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50–57 (Jan. 7, 2019) (“2019 PEG”). Under the 2019 PEG, 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); and

- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).³

See 2019 PEG, 52, and 55–56. Only if a claim: (1) recites a judicial exceptional; and (2) does not integrate that exception into a practical application, does the office then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is 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 PEG at 56.

We analyze the patent-eligibility rejection with the principles identified above in mind.

Examiner’s Findings and Conclusions

In the first step of the Alice inquiry, the Examiner determines independent claims 1, 7, and 13 are directed to the abstract idea of “sending and receiving review messages from vehicle to vehicle.” Final Act. 2. According to the Examiner, the underlying steps of “providing a list of driver-affiliated users[]; receiving selection of a user; receiving a review of a good or service from a driver, []determining when the selected user becomes available for communicat[ing] and delivering the review” are all steps which can be performed by a human mentally. *Id.* The Examiner determines that these concepts have all been identified as being directed to mental processes. *Id.* In particular, the Examiner avers that the notions of collecting

³ All references to the MPEP are to Rev. 08.2017 (Jan. 2018).

information, analyzing it, and notifying the user when the user is available (e.g., *FairWarning*); delivering user-selected media content to portable devices (as in *Affinity Labs*); collecting and comparing known information (e.g., *Classen*); collecting and comparing known information (e.g., *SmartGene*); and using categories to organize, store, and transmit information (e.g., *Cyberfone*), have all been identified as being directed to mental processes, which can be performed by a human mentally or with pen and paper. *Id.* at 2–3.

At *Alice* step 2, the Examiner determines the claims do not recite additional elements sufficient to amount to significantly more than the abstract idea of sending and receiving review messages. Final Act. 3. According to the Examiner, the additional recitation of a “vehicle computing system (VCS)’ being capable of receiving a driver input review” merely recites the “vehicle” equipped with a “VCS”, which is at a high level of generality akin to generic computers performing well-understood, routine, and conventional functions implementing the abstract idea. *Id.* Further, the Examiner avers there is no indication that the combination of elements improves the functionality of the computer or any other technology. *Id.* at 4. Instead, the claimed steps merely describe providing/transmitting, receiving, and delivering data over a network, which are routine functions performed by a generic computer. *Id.* (citing Spec. ¶¶ 18–25).

Appellants’ Contentions

Appellants argue the claimed provision of a review-recipients-list, from which one recipient is selected to receive a review, is an uncommon and an atypical form of review delivery that amounts to substantially more

than the alleged abstract idea. App. Br. 6. Further, Appellants argue that the Examiner's failure to consider the implication of the claim as a whole, including the recited ability to provide on-demand reviews to a list of preferred recipients upon review completion, is reversible error of the patent eligibility rejection. *Id.*

Our Review

Applying the guidance set forth in the 2019 PEG, we determine whether the Examiner has erred in rejecting the claims as being directed to patent ineligible subject matter.

In revised step 1 of 2019 PEG, we consider whether the claimed subject matter falls within the four statutory categories of patent-eligible subject matter identified by 35 U.S.C. § 101: process, machine, manufacture, or composition of matter. Because independent claim 1 recites a “computer-implemented method” including a number of steps, claim 1 falls within the process category of patent-eligible subject matter. Because independent claim 7 recites a “system” including a computer for performing various functions, claim 7 falls within a machine category of patent-eligible subject matter. Because claim 13 recites a “non-transitory computer-readable storage medium” including instructions, when executed by a computer, performs various functions, claim 13 falls within the manufacture category of patent-eligible subject matter.

In prong 1 of revised step 2A of the 2019 PEG, we determine whether any judicial exception to patent eligibility is recited in the claims. The guidance identifies three judicially-excepted groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity

such as fundamental economic practices; and (3) mental processes.

Independent claim 1 recites, *inter alia*, the following limitations:

- (1) Providing a list of driver-affiliated users,
- (2) Receiving selection of a user from the list;
- (3) Receiving a review of a good or service from a driver;
- (4) Attempting to deliver the review to a VCS of the selected user;
- (5) Delivering the review to the VCS when the user becomes available

At the outset, we note Appellants do not dispute the Examiner's determination that these limitations relate to "sending and receiving review messages from vehicle-to-vehicle," which can be performed mentally by a human. Final Act. 2. Therefore, as correctly noted by the Examiner, sending and receiving messages between parties is the kind of data exchange activity that that has been identified by our reviewing court as a mental process. *See e.g., Cyberfone*. Additionally, we determine these limitations are steps of "managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)," which the 2019 PEG provides are "[c]ertain methods of organizing human activity." 84 Fed. Reg. 52. Accordingly, independent claims, 1, 7, and 13 recite the judicial exceptions of a mental process and a method of organizing human activity. Having determined that the claims recite a judicial exception, our analysis under the 2019 PEG turns now to determining whether there are "additional elements that integrate the judicial exception into a practical application." *See* MPEP § 2106.05(a)–(c), (e)–(h). "Integration into a practical application" requires an additional element or a combination of additional elements in the claim to apply, rely on, or use the

judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the exception. 84 Fed. Reg. 53.

Appellants' claims 1, 7, and 13 recite a computer-related limitation, (e.g., Vehicle Computing System (VCS)). We do not find the computer-related limitation is sufficient to integrate the judicial exception into a practical application. Besides indicating that the VCS is an equipment including a processor within each communicating vehicle for enabling the sharing of reviews, the Specification does not provide additional details about the VCS that would distinguish it from any generic communication device. *Id.* ¶¶ 18–22. Although we do not dispute that the VCS includes specific logic for providing a list of driver-affiliated users from which a particular user can be selected to receive the review, Appellants do not persuasively explain why the claimed provision of a driver-affiliated list improves the functioning of a VCS, or improves the communication technology as a whole. *See* MPEP § 2106.05(a). Rather, the claims merely adapt the method of organizing human activity and mental process of sending and receiving reviews to an execution of steps performed by a VCS mounted in a vehicle. *See Credit Acceptance*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (“Our prior cases have made clear that mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology.”); *see also Bancorp Services, L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (A computer “employed only for its most basic function . . . does not impose meaningful limits on the scope of those claims.”). Further, Appellants' identified improvements are improvements to the abstract idea,

not improvements to a technology or computer functionality. Thus, on the record before us, the cited claim limitations do not improve the functionality of the VCS by performing operations to provide a list of driver-affiliated users, nor do they achieve an improved technological result in conventional industry practice. *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1316 (Fed. Cir. 2016).

Because claim steps 1–5, outlined above, do not (1) provide any technical solution to a technical problem as required by *DDR Holdings*;⁴ (2) provide any particular practical application as required by *BASCOM*;⁵ or (3) entail an unconventional technological solution to a technological problem as required by *Amdocs*,⁶ we agree with the Examiner’s determination that Appellants’ claims 1, 7, and 13 are directed to an abstract idea that is not integrated into a practical application.

Alice/Mayo—Step 2 (Inventive Concept)

Turning to step 2 of the *Alice/Mayo* framework, we look to whether the claim: (a) recites a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field; or (b)

⁴ See *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). The Federal Circuit found *DDR*’s claims are patent-eligible under 35 U.S.C. § 101 because *DDR*’s claims: (1) do not merely recite “the performance of some business practice known from the pre-Internet world” previously disclosed in *Bilski* and *Alice*; but instead (2) provide a technical solution to a technical problem unique to the Internet, i.e., a “solution ... necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR*, 773 F.3d at 1257.

⁵ See *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

⁶ See *Amdocs Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016).

simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. 2019 PEG, 56. We discern no additional element or combination of elements recited in Appellants’ independent claims 1, 7, and 13 that contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. *Alice*, 573 U.S. at 221. Appellants do not direct our attention to any portion of the Specification indicating that the claimed processor performs anything other than well-understood, routine, and conventional functions, such as receiving and processing. *See Elec. Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (“Nothing in the claims, understood in light of the [S]pecification, requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information.”); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2015) (“That a computer receives and sends information over a network—with no further specification is not even arguably inventive.”); and *Alice*, 573 U.S. at 224–26 (receiving, storing, sending information over networks insufficient to add an inventive concept). Instead, Appellants’ claimed subject matter simply uses generic computer components (e.g., VCS) to perform the abstract idea of “sending and receiving review messages from vehicle-to-vehicle.” App. Br. 2; *see also* Spec. ¶¶ 18–32. As noted above, the use of a generic computer (e.g., VCS) does not alone transform an otherwise abstract idea into patent-eligible subject matter. As our reviewing court has observed, “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise

ineligible claim patent-eligible.” *DDR*, 773 F.3d at 1256 (citing *Alice*, 573 U.S. at 223).

Because the discussed claim elements only recite generic computer functions that are well-understood, routine, and conventional, the claim is devoid of an inventive concept. *See Alice*, 573 U.S. at 217. Appellants are reminded that “the ‘inventive concept’ [under step two of the *Mayo/Alice* test] cannot be the abstract idea itself” and “*Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.” *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring). “It has been clear since *Alice* 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). We, therefore, agree with the Examiner that the computer functions recited in the claims were, in fact, generic, and are met by numerous case law establishing that using a generic computer to expedite and automate processes traditionally performed manually, or that are otherwise abstract, is a well-understood, routine, and conventional use of such computers. Final Act. 3; *see also, e.g., Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1321 (Fed. Cir. 2016) (utilizing an intermediary computer to forward information); and *Bancorp Services, L.L.C.*, 687 F.3d at 1278 (“The computer required by some of Bancorp’s claims is employed only for its most basic function, the performance of repetitive calculations, and as such does not impose meaningful limits on the scope of those claims.”).

To the extent Appellants argue the claims necessarily contain an “inventive concept” based on their alleged novelty or non-obviousness over the cited references, Appellants misapprehend the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but, rather, a search for “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.’” *Alice*, 573 U.S. at 217–218. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90.

Appellants are further reminded that, in many cases, “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 224) (“[U]se of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions” is not an inventive concept.); *see also, e.g., Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363, 1370 (“[M]erely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.”). Therefore, the functions recited in independent claims 1, 7, and 13 do not add any meaningful limitations beyond generally linking the abstract idea to the particular technological environment. *See* Final Act 3–5.

Because Appellants’ claims 1, 7, and 13 are directed to a patent-ineligible abstract concept and do not recite something “significantly more”

under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of claims 1, 7 and 13 under 35 U.S.C. § 101.

Obviousness Rejection

A claim is unpatentable for obviousness if, to one of ordinary skill in the pertinent art, “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (quoting 35 U.S.C. § 103(a)). The question of obviousness is resolved on the basis of underlying factual determinations, including “the scope and content of the prior art;” “differences between the prior art and the claims at issue”; and “the level of ordinary skill in the pertinent art.”⁷ *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966).

A patent claim “is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418. An obviousness determination requires finding “both ‘that a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success in doing so.’” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367–68 (Fed. Cir. 2016) (citation omitted); *see also KSR*, 550 U.S. at 418 (For an obviousness analysis, “it can be important to identify a reason that

⁷ Additionally, secondary considerations, such as “commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.” *Graham*, 383 U.S. at 17–18.

would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”).

We analyze the obviousness rejection with the principles identified above in mind.

Appellants argue that the Examiner erred in rejecting claims 1, 7 and 13 as obvious over the combination of Basir, Weiland, and Lewis because none of the cited references teaches or suggests providing a list of driver-affiliated users whose VCS-equipped vehicles are capable of receiving a review. App. Br. 7. In particular, Appellants argue that while Basir discloses a plurality of vehicles capable of sending/receiving text or email messages to/from individuals in a contact list, it does not teach presenting a list of affiliated drivers whose vehicles are equipped with a VCS for inter-vehicle communication, nor does it teach presenting the list of contact for user selection. *Id.* at 7–8. According to Appellants, the list recited in the claim is a list identifying the capability of driver recipients whose vehicles are equipped with a VCS for inter-vehicle communication, as opposed to a generic list of email contacts. *Id.* at 8. Further, Appellants contend that Weiland’s disclosure of users providing digital reviews of goods, products or services does not cure the noted deficiencies in Basir, and neither does Lewis’s disclosure. *Id.* These arguments are not persuasive.

As correctly noted by the Examiner, “Basir . . . specifically teaches a vehicle-to-vehicle communication system for sending messages to other vehicles.” Ans. 9 (citing Final Act. 6–9; Basir, Abstract). “While Basir does not specifically state that the content of these messages are ‘reviews,’ the system in Basir is certainly ‘capable’ of sending and receiving review messages.” *Id.* (citing See Basir, ¶¶ 49, 59–60). As detailed expansively in

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the Answer, Basir's entire disclosure is about inter-vehicle communication between drivers/vehicles displayed in contact list, each vehicle equipped with a communication device for exchanging email/text messages with other drivers. *Id.* at 9–16. We find no reversible error in these Examiner's findings, and adopt them as our own.

DECISION

For the above reasons, we affirm the Examiner's patent ineligibility and obviousness rejections of claims 1, 7, and 13.

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).

AFFIRMED