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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL G. KEHOE, DAVID SANCHEZ ESCOBAR,
and BRIAN O’ROURKE

Appeal 2018-006651
Application 14/927,445
Technology Center 3700

Before MICHAEL C. ASTORINO, BRUCE T. WIEDER, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant¹ requests rehearing of the decision entered August 12, 2019 (“Decision”), which affirmed the Examiner’s rejection of claims 1–6, 8, and 11–13 under 35 U.S.C. § 101. Appellant contends that we mischaracterized the claims on appeal and applied an incorrect legal standard in evaluating the

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as “ZCO ACQUISITIONS, INC.” Appeal Br. 1.

claims. *See* Req. Reh’g 2–3. As discussed below, we find no point of law or fact that we overlooked or misapprehended in arriving at our Decision.

DISCUSSION

Appellant raises two issues in their request for rehearing: 1) that we misinterpreted the claims; and 2) that our discussion of the use of a conventional computer is not relevant to the Step 2A, Prong Two analysis. We address each in turn below.

Issue 1

Appellant first argues that we misinterpreted the claims by finding that they recite game rules and that our analysis in this regard overlooked the claimed social reporting engine. Req. Reh’g 3. We disagree.

In our decision, we found that “the claimed challenge application includes a set of rules for playing a direct challenge game.” Decision 8. Further, we agreed with the Examiner that such rules were similar, in concept, to the rules for conducting a game found abstract in *In re Smith*. *Id.* After determining that the claim includes a set of rules, we further determined that the set of rules “amounts to managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions), which is one of certain methods of organizing human activity.” *Id.* at 8–9 (citing 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (“Revised Guidance”); *In re Smith*, 835 F.3d at 818-19). We are not persuaded of any error in this analysis.

Appellant asserts that the claims at issue “clearly have nothing to do with rules for playing a game” and that the claimed functions do not contain “any rules for how the user is to play the game.” Req. Reh’g 3. We

disagree and we are not persuaded to the extent Appellant indicates that these are not rules for a user to follow because a computer is processing the direct challenge. Here, a computer receives input from a user regarding a direct challenge, gathers data regarding the parameters of the challenge, and calculates a score for the challenge. Whether or not these rules are implemented by a computer or a specific user, we find that they are indeed rules for conducting a direct challenge.

We also are not persuaded of any error in our Decision by Appellant's arguments regarding *In re Smith*. We disagree with Appellant that "[t]he guidance in *Smith* does not extend beyond games implemented with standard playing cards." Req. Reh'g 4. Recent precedent belies this statement. *See In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1161 (Fed. Cir. 2018). In *Guldenaar*, the Federal Circuit makes clear that the claims in *Smith* were drawn to an abstract idea because the claims were similar to the exchanging of financial obligations and methods of hedging risk that were previously found to be abstract. 911 F.3d at 1160. Further, the Federal Circuit applied these same principles in finding that claims directed to a method of playing a dice game were ineligible. *Id.*

Further, our Decision makes clear that it is not merely the fact that the claim includes rules for playing a game that indicates the claim recites an abstract idea, rather the specific limitations relied upon "amount[] to managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions, which is one of certain methods of organizing human activity." Decision 8–9. Even if the claims are not considered as recited rules for a game, they nonetheless include limitations regarding the management of interactions

between people in the context of “direct challenges between users of a game application,” as claimed.

Next, Appellant asserts that we overlooked the claimed “social reporting engine” in our analysis. We disagree. In our Decision we indicated that the claimed “social reporting engine” is an additional element of the claim beyond the recited abstract idea. *See* Decision 10. And we provided analysis regarding why the social reporting engine does not provide a basis for finding the claim eligible under 35 U.S.C. § 101. *See id.* at 11–15.

Issue 2

Second, Appellant argues that the claims integrate the judicial exception into a practical application of the exception and that our analysis in the Decision with respect to the claimed computer system “is clearly incongruent with the requirements of the Revised Guidance” at Step 2A, Prong Two. Req. Reh’g 6. Appellant asserts that we “[e]ssentially applied the Step 2B standard when analyzing Step 2A, Prong Two.” *Id.*

We disagree. In our analysis under Step 2A, Prong Two, of the Revised Guidance, we determined that:

In addition to the limitations addressed above as part of the recited abstract idea, claim 1 also recites a system including “an application services interface comprising a database and an external data reader in communication with a plurality of external data servers;” “a plurality of user interfaces to facilitate access to said application services interface;” and “a non-transitory computer-readable medium . . . and one or more processors” for executing program instructions. Additionally, the claim recites “a social reporting engine, in communication with said database, for collecting and storing user data” and “generating automatically an aggregate data set for the first

subset of said users whom exhibit a challenge victory rate above a predetermined threshold over a predetermined time period.”

Decision 9–10. As part of our analysis of these additional claim elements, we found that claim 1 requires “generic computer technology to store, process and transmit data, and does not recite an improvement to a particular computer technology.” *Id.* at 10. We then determined, based on the claim language and the Specification, that the claims do not require the use of any specialized computer equipment or reflect any improvement in the functioning of the computer that may be indicative of a practical application of the abstract idea. *Id.* at 10–11. Thus, the Decision makes clear that our finding that the claim limitations of “issuing instructions, analyzing data, reporting data, and storing data” may be performed by any computer system was in the context of the Step 2A, Prong Two analysis related to whether the claims require any specialized computer equipment to perform the functions claimed.

Further, the Decision provides a separate analysis of whether the specific functions performed in the claim are well-understood, routine, and conventional. *See id.* at 14–17. As such, we disagree that the our reference to “basic computer functions” in the analysis under Step 2A, Prong Two shows that “[r]ehearing is necessary so that the Board can correct this error and fully consider that the claimed invention is integrated into a practical application even if such integration uses conventional computer technology.” Req. Reh’g 6.

CONCLUSION

We have carefully reviewed the original Decision in light of Appellant’s request, but we find no point of law or fact that we overlooked

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or misapprehended in arriving at our decision. Therefore, Appellant's request for rehearing is denied.

Outcome of Decision on Rehearing:

Claims Rejected	35 U.S.C. §	Basis	Granted	Denied
1-6, 8, 11-13	101	Eligibility		1-6, 8, 11-13

Final Outcome of Appeal after Rehearing:

Claims	35 U.S.C. §	Basis	Affirmed	Reversed
1-6, 8, 11-13	101	Eligibility	1-6, 8, 11-13	
Overall Outcome			1-6, 8, 11-13	

DENIED