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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN JAMES MESSERICH and
THOMAS CHRISTOPHER TRKSAK

Appeal 2018-006702
Application 13/600,895
Technology Center 3600

Before MAHSHID D. SAADAT, ERIC S. FRAHM, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Non-final Rejection of claims 1, 8–10, 12, 13, and 16–18, which constitute all the claims pending in this application.² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellant, the real party in interest is Navitaire LLC. Appeal Br. 3.

² Claims 2–7, 11, 14, and 15 have been canceled.

STATEMENT OF CASE

Introduction

Appellant's Specification is directed to "implementations of asynchronous, event-driven systems that broker between multiple components to provide real-time accounting of revenue that is earned from travel provided on a travel conveyance." *See* Spec. ¶ 22.

Exemplary claim 1 under appeal reads as follows;

1. A method comprising:

monitoring, by a sink in communication with a travel system including one or more processors, a boarding system, for occurrence of an event that is triggered by a boarding status for a vehicle being changed from a scheduled status to a closed status in the boarding system, wherein the sink listens for the occurrence of the event;

recognizing, by the sink, the occurrence of the event; and contemporaneously in response to the event being recognized:

generating, by the sink, a status message including a manifest indicating each of a plurality of passengers that were boarded onto the vehicle and a revenue including one or more of fare, tax, and fees associated with each of the plurality of passengers indicated to have been boarded onto the vehicle, and

transmitting, by the sink, the status message to a computer-implemented accounting service,

wherein, contemporaneously in response to receiving the status message, the computer-implemented accounting service is configured to:

access booking data generated by a booking system for each passenger among the plurality of passengers when booking passage on the vehicle;

identify earned revenue for the vehicle by comparing the booking data generated by the booking

system with the manifest included in the status message generated by the sink, and

update an earned revenue repository associated with the vehicle based on the earned revenue.

Rejection on Appeal

Claims 1, 8–10, 12, 13, and 16–18 stand rejected under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. *See* Non-final Act. 2–7.

ANALYSIS

“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review de novo.” *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010). We have reviewed the Examiner’s rejection in light of Appellant’s arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Appellant does not separately argue the claims. *See* Appeal Br. 8–15. We select claim 1 as representative. *See* 37 C.F.R. §41.37(c)(1)(iv).

The Examiner determines that “the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more” because the claims “are directed to the abstract idea of realizing revenue in a travel system, a fundamental economic practice or method of organizing human activities, which is considered an abstract idea” and “when examined on a limitation-by-limitation basis and in order combination, do not include inventive concept.” Non-final Act. 2–3. The Examiner further determines that “the claims are not directed to ‘an improvement to computer technology,’ such as found by

the CAFC in *Enfish*, but to the abstract idea itself.” Non-final Act. 3; *see also Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (describing the two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.”).

After the mailing of the Answer and the filing of the Briefs in this case, in January 2019, the USPTO published revised guidance on the application of § 101. *See* USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under that guidance (“Step 2A”), the office first looks to whether the claim recites:

- (1) 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) Prong Two: additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (MPEP) §§ 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08. 2017, Jan. 2018)).

Only if a claim (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then (pursuant to the Guidance “Step 2B”) look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not well-understood, routine, and conventional in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance, 84 Fed. Reg. 56.

We are not persuaded the Examiner’s rejection is in error. We adopt the Examiner’s findings and conclusions as our own, to the extent consistent

with our analysis herein. We add the following primarily for emphasis and clarification with respect to the Guidance.

I. Step 2A

Appellant argues “claim 1 requires a sink to ‘monitor[] . . . a boarding system for occurrence of an event that is triggered by a boarding status for a vehicle being changed from a scheduled status to a closed status in the boarding system,” which contemporaneously in response to recognizing that the event has occurred, “requires the sink to ‘generat[e] . . . a status message including a manifest indicating each of a plurality of passengers that were boarded onto the vehicle and a revenue . . . associated with each of the plurality of passengers” Appeal Br. 9–10.

We are not persuaded of Examiner error.

Prong One

Pursuant to the Guidance, we agree with the Examiner that claim 1 recites a method for “realizing revenue in a travel system,” which is considered a “fundamental economic practice or method of organizing human activities.” Non-final Act. 3. *See* Spec. ¶¶ 1–3; *see also* Guidance, Section III (A)(I) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception), 84 Fed. Reg. at 54. Specifically, claim 1 recites steps of “monitoring, . . . a boarding system, for occurrence of an event,” “recognizing, . . . , the occurrence of the event,” “generating, . . . , a status message,” and “transmitting, . . . , the status message to a computer-implemented accounting service,” *See* Appeal Br. 17 (Claim App.). These limitations are classified by the Guidance as steps of “sales activities or behaviors[,] business relations[,] ... and following rules or instructions,” which are “fundamental economic principles or practices,” “commercial or

legal interactions,” and “managing personal behavior or relationships or interactions between people.” Guidance at 52. Pursuant to the Guidance, such limitations are the abstract concept of “[c]ertain methods of organizing human activity.” *Id.*

Prong Two

Appellant contends that claim 1 requires “a sink monitoring a boarding system for an occurrence of an event and generating a status message that includes a manifest,” as related to the operation of a sink. Appeal Br. 10. Appellant argues the “claims are ‘not simply the generalized use of a computer as a tool to conduct a known or obvious process,’ but ‘are focused on a specific technique of improving computer-implemented accounting systems in the travel industry by enabling real-time accounting of revenue earned from travel provided on a travel conveyance.’” Appeal Br. 10 (citing *Trading Technologies Int’l, Inc. v. CGQ, Inc.*, No. 2016-1616 (Fed. Cir. January 18, 2017), slip op. at p. 8.). Appellant refers to the Specification to explain how the claimed computer-implemented accounting system solves the delay issue related to the revenue transitioning to an “earned status.” Appeal Br. 10–11 (citing Spec. ¶¶ 1–2, 33–34, 36–37).

We are not persuaded the Examiner’s rejection is in error pursuant to Step 2A, Prong Two of the Guidance. Appellant has not shown the claim includes additional elements that improve the underlying computer, or other technology. Although Appellant’s alleged improvement to technology is “enabling real-time accounting,” the term “real-time” is used by Appellant merely to describe automatic execution without human input; i.e., by operation of the computerized system. Spec. ¶ 32. However, “merely adding computer functionality to increase the speed or efficiency of the

process does not confer patent eligibility on an otherwise abstract idea.”). *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015). (Moreover, Appellant’s purportedly improved abstract concept, “using event-based triggers instead of temporal-based triggers” (App. Br. 11), is still an abstract concept under the Guidance. *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (holding that “a claim for a new abstract idea is still an abstract idea.”) (emphasis omitted). That is, monitoring and recognizing the occurrence an event and generating a status message, even in real time, are parts of the recited abstract idea, as discussed above. *See* Ans. 4–5. As the argued elements are part of the abstract idea, they are not additional elements that integrate the identified abstract idea into a practical application. *See* Guidance, 84 Fed. Reg. 54-55 (“evaluate integration into a practical application by: (a) Identifying whether there are any additional elements recited in the claim beyond the judicial exception(s)”). Accordingly, we determine the claim does not integrate the judicial exception into a practical application. *See* Guidance, 84 Fed. Reg. at 54. We determine the “claim recites a judicial exception and fails to integrate the exception into a practical application,” therefore we proceed with “further analysis pursuant to the second step of the *Alice/ Mayo* test (USPTO Step 2B).” Guidance, 84 Fed. Reg. at 51.

II. Step 2B

Appellant argues the Examiner errs in determining the claims do not recite an inventive concept that amounts to significantly more than the judicial exception itself. Appeal Br. 13–14; Reply Br. 4–5; *see also* Non-final Act. 6–7. We disagree. The claimed “sink monitoring a boarding

system for an occurrence of an event and generating a status message that includes a manifest” as well as the recited “computer-implemented accounting system identifying earned revenue for a vehicle by comparing booking data generated by a booking system with the manifest included in the status message generated by the sink,” as argued by Appellant, are part of the recited judicial exception itself, as discussed above. Appeal Br. 13; see also Guidance at 56 (“[E]valuate the additional elements individually and in combination” in step 2B.); Guidance fn. 24 (“USPTO guidance uses the term ‘additional elements’ to refer to claim features, limitations, and/or steps that are recited in the claim beyond the identified judicial exception.”) (emphasis omitted).

Regarding the claimed “sink” and “accounting system,” we agree with the Examiner that the limitation is well-understood, routine, and conventional. See Final Act. 6–7, Ans. 4; Fig. 5, Spec. ¶¶ 33–34, 43–46; *Alice*, 573 U.S. at 226 (“But what petitioner characterizes as specific hardware . . . is purely functional and generic. Nearly every computer will include a ‘communications controller’ and ‘data storage unit’ capable of performing the basic calculation, storage, and transmission functions required by the method claims.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (Claims reciting, inter alia, sending messages over a network, gathering statistics, using a computerized system to automatically determine an estimated outcome, and presenting offers to potential customers found to merely recite “well-understood, routine conventional activit[ies].”). Similarly, the additional elements recited in claim 1, such as generating and transmitting a status message as well as accessing data and identifying and updating an earned revenue “do not effect

an improvement to another technology or technical field; the claims do not amount to an improvement to the functioning of a computer system itself; and the claims do not move beyond a general link of the use of an abstract idea to a particular technological environment.” *See* Ans. 4–5.

As such, Appellant’s claims can be distinguished from patent-eligible claims such as those in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). *See* Appeal Br. 14–15. In *Bascom*, the system claims were directed to a “content filtering system for filtering content retrieved from an Internet computer network,” which the court held were directed to an abstract idea. *Id.* at 1348–49. The court further held the claims included an inventive concept in the ordered combination of system components, including a local client computer and a remote ISP server connected to the client computer and Internet computer network providing for “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *Id.* at 1350. Appellant has failed to establish that claim 1 includes a similar or analogous arrangement or “ordered combination” of components, and, instead, makes only the conclusory statement that the recited sink, boarding system, and the computer-implemented accounting system are “non-conventional and non-generic arrangement of components in a travel system.” Appeal Br. 15; *see also* Reply Br. 4.

Other Considerations

We have reviewed all the arguments Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. Appeal Br. 8–15. We find that our analysis above

substantially covers the substance of all the arguments which have been made. But, for purposes of completeness, we will add the following.

To the extent Appellant argues that the Examiner erred in adequately supporting this determination by not providing evidence, or considering the claims in their entirety, to justify identifying the specific limitations as reciting an abstract idea (*see* Appeal Br. 8), we are unpersuaded. In this regard, there is no requirement that Examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, Manual of Patent Examining Procedure § 2106.07 (a)(III) (2018) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a question of law. Thus, the court does not require ‘evidence’ that a claimed concept is a judicial exception, and generally decides the legal conclusion of eligibility without resolving any factual issues.” (Citations omitted.)) Moreover, the Federal Circuit made clear in *Berkheimer* that “not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). In fact, the Federal Circuit in *Berkheimer* did not require evidentiary support for independent claim 1 because “[t]he limitations [of claim 1] amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components.” *Id.* at 1370.

All that is required of the USPTO to meet its prima facie burden of production is that the Examiner set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulated and informative manner as to meet the notice requirement of 35 U.S.C. § 132.

As the statute itself instructs, the Examiner must “notify the applicant,” “stating the reasons for such rejection,” “together with such information and references as may be useful in judging the propriety of continuing the prosecution of his application.” 35 U.S.C. § 132; *see also In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011) (declining “to impose a heightened burden on examiners beyond the notice requirement of § 132”). Here, as we found above, the Examiner has made these findings as required by the statute. *See* Non-final Act 2–7. Specifically, in rejecting the pending claims under § 101, the Examiner notified Appellant that the claims recite steps that describe the concepts of realizing revenue in a travel system, a fundamental economic practice or method of organizing human activity that is a fundamental economic practice (Non-final Act. 3), and that the claims do not include additional elements that would amount to significantly more than the abstract idea. Final Act. 5–6. Thus, we find that a *prima facie* case was established by the Examiner.

Conclusion

For at least the above reasons, we agree with the Examiner that claim 1 is “directed to” an abstract idea and does not recite an “inventive concept.” Accordingly, we sustain the Examiner’s rejection of claim 1 and the remaining claims which fall therewith, under 35 U.S.C. § 101.

DECISION

We affirm the Examiner’s rejection of claims 1, 8–10, 12, 13, and 16–18 under 35 U.S.C. § 101.

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).

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In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 8–10, 12, 13, and 16–18	§ 101	1, 8–10, 12, 13, and 16–18	
Overall Outcome		1, 8–10, 12, 13, and 16–18	

AFFIRMED