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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEE M. AMAITIS, JOSEPH M. ASHER, ADAM BURGIS and
DOMINIC CROSTHWAITE

Appeal 2018-006759
Application 10/667,755
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU
R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 2, 15, 16, 24–26, 31, 34–49, 54 and 57–69. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims a system and method for betting on events and more particularly to spread betting on a participant in a group of events. (Spec. 1; Title).

Claim 1 is representative of the subject matter on appeal.

1. A method for facilitating betting over a communication network between a betting machine of a betting system interface having a payment input device and payment output device and an interface of a betting system platform, the method comprising:

causing to be displayed at a display device of a betting machine of a betting system interface, by at least one processor of at least one computer of an interface of a betting system platform of an electronic communication network, data representing information about a first quote;

receiving, by the at least one processor of the at least one computer of the interface of the betting system platform, from a payment input device of the betting machine of the betting system interface, data representing a first bet at the first quote and payment for the first bet derived from an electronic signal in response to receipt of a first physical form of payment, the first bet having an associated first unit stake, the first quote corresponding with a total number of units that could be earned by a participant in a plurality of events;

determining, by the at least one processor of the at least one computer of the interface of the betting system platform, whether to generate an electronic signal to cause dispense of a first physical form of receipt for the payment;

causing, by the at least one processor of the at least one computer of the interface of the betting system platform, to generate, an electronic signal to cause dispense of a first physical form of receipt for the payment, at the payment output device of the betting machine of the betting system interface;

receiving, by the at least one processor of the at least one computer of the interface of the betting system platform, from a betting system interface, data representing results of each of the plurality of events, the results comprising the positioning of the particular participant in each of the plurality of events;

for each of the plurality of events, determining, by the at least one processor of the at least one computer of the betting system platform, data representing a number of units earned by the participant based at least in part on the positioning of the participant in the event and a purse distribution structure defining a distribution of a purse over a plurality of positions in the event;

determining, by the at least one processor of the at least one computer of the betting system platform, data representing an amount of a payout for

Appeal 2018-006759
Application 10/667,755

the first bet based at least in part on the first unit stake, the first quote, and the total number of units earned by the participant in the plurality of events;

causing, by the at least one processor of the at least one computer of the interface of the betting system platform, to generate an electronic signal to cause dispense of a physical payout printout having data representing information about the payout to be provided at the payment output device of the betting machine of the betting system interface; and

receiving, by the at least one processor of the at least one computer of the interface of the betting system platform, from the payment input device of the betting machine of the betting system interface, data representing a second bet at a second quote and payment for the second bet in response to an electronic signal from receipt of a second physical form of payment that includes data from the physical payout printout.

THE REJECTION

Claims 1, 2, 15, 16, 24–26, 31, 34–49, 54 and 57–69 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 2–28 of the Final Office Action.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1, 2, 15, 16, 24–26, 31, 34–49, 54 and 57–69 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and

abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, . . . then ask, “[w]hat else is there in the claims before us?” . . . To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. . . . [The Court] described step two of this analysis as a search for an “inventive concept”—*i.e.*, 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 Corp. Pty. Ltd. v. CLS Bank Int’l, 573 U.S. 208, 217-218 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)) (citations omitted).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the judicial exception is integrated into

Appeal 2018-006759
Application 10/667,755

a practical application. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 FR 50, pp 50–57 (Jan. 7, 2019).

The Examiner determines that the claims are directed to managing bets placed in a sporting event which is a fundamental economic practice, a method of organizing human activities, and a mathematical relationships. (Final Act. 3). The Examiner also determines that the claimed method can be performed in the human mind, or by a human using pen and paper and collecting and comparing known information. (Final Act. 3-4). The Examiner finds the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claims recite generic computer elements (e.g. a computing device) which do not add a meaningful limitation to the abstract idea because they would be routine in any computer implementation. (Final Act. 8).

The Specification describes that the method of the invention relates to betting on events and more particularly to a method for spread betting on a participant in a group of events. (Final Act. 1). The method more specifically is a method of managing bets. The Specification describes:

The method may include receiving a first bet at a first quote, the first bet having an associated first unit stake, the first quote corresponding with the total number of units potentially earned by a participant in a plurality of events. Results of each of the plurality of events may be received. The results may include the positioning of the particular participant in each of the plurality of events. The total number of units earned by the participant in the plurality of events may be determined based at least in part on the results of each of the plurality of events. An amount of a payout for the first bet may be determined based at least in part on the first unit stake, the first quote, and the total number of units earned by the participant in the plurality of events. (Spec. 3).

Consistent with this disclosure claim 1 recites “causing to be displayed at a display device . . . data representing information about a first quote,” “receiving . . . data representing a first bet at the first quote,” “receiving . . . data representing results of each of the plurality of events,” “determining . . . data representing a number of units earned by the participant based . . . on the positioning of the participant in the event and a purse distribution,” “determining . . . a payout for the first bet,” “to cause dispense of a physical payout.”

We thus agree with the Examiner’s findings that the claims are directed to managing bets. We agree with the Examiner that:

Claims 1, 2, 15, 16, 24 — 26, 31, 34 – 49, 54, and 57— 69 are directed to an abstract idea of managing bets placed in a sporting event, specifically, the handling and provision of the wagers placed and determining a payout amount based on the performance of the participants in the event, the stakes, and quote (total number of units that could be earned by a participant in the sporting event). For instance, in *Alice Corp.* the Supreme Court found that "intermediated settlement" was a fundamental economic practice, which is an abstract idea. In this case, the claimed invention is directed to a fundamental economic practice, a method of organizing human activities, an idea of itself, and a mathematical relationship or formula because the claimed invention is directed concepts relating to the economy and commerce, such as agreements between people.

Final Act. 3.

A fundamental economic practice is a judicial exception. *Guidance* 84 Fed. Reg. 50. Also, we find the steps of claim 1 constitute “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d

Appeal 2018-006759
Application 10/667,755

1350, 1354 (Fed. Cir. 2016); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (claims directed to certain arrangements involving contractual relations are directed to abstract ideas). Thus, we find that claim recite the judicial exception of a fundamental economic practice and in the alternative a mental process-.

Turning to the second prong of the “directed to test”, claim 1 requires “a betting system interface.” The Specification describes that this interface can include a processor coupled to a memory. This recitation does not impose “a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *Guidance* 84 Fed. Reg. at 55. We find no indication in the Specification, nor do Appellant directs us to any indication, that the operations recited in independent claim 1 invoke any inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes any improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the revised *Guidance*. *See Guidance*, 84 Fed. Reg.

Appeal 2018-006759
Application 10/667,755
at 55.

In this regard, the recitation does not affect an improvement in the functioning of the betting system platform or other technology, does not recite a particular machine or manufacture that is integral to the claims, and does not transform or reduce a particular article to a different state or thing. *Id.* Thus, claim is directed to judicial exceptions that are not integrated into a practical application and thus is directed to an “abstract idea.”

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217-18 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

Claim 1 recites “betting system interface” which may be a monitor or a processor and a betting system platform which includes a processor. (Spec. 19-21). The introduction of processors into the claim 1 does not alter the analysis at *Alice* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a

computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223 (alterations in original) (citations omitted).

Instead, “the relevant question is whether claim 1 here does more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 225. It does not. Accordingly, the Examiner correctly found, “[t]he claim(s) does not include additional element that are sufficient to amount to significantly more than the judicial exception because the claim recited generically computer elements (e.g. a computing device) which do not add a meaningful limitation to the abstract idea because they would be routine in any computer implementation.” (Final Act. 8).

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the trading industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved

Appeal 2018-006759
Application 10/667,755

by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am. Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

Considered as an ordered combination, the betting system interface and betting system platform of Appellant’s claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-access/display is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Claim 1 does not, for example, purport to improve the functioning of the betting system interface or the betting system platform. As we stated above, claim 1 does not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of

Appeal 2018-006759
Application 10/667,755

information access under different scenarios. (*See, e.g.*, Spec. 20–21). Thus, claim 1 amounts to nothing significantly more than instructions to apply the abstract idea managing bets. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 226.

We have reviewed all the arguments (Appeal Br. 11–16; Reply Br. 2–5) Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. 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 address various arguments in order to make individual rebuttals of same.

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the Examiner overgeneralizes the claim and fails to account for the specific requirements of the claims. (Appeal Br. 11). Appellants’ argument is not persuasive at least because there is no requirement that the Examiner’s formulation of the abstract idea copy the claim language. The Examiner’s characterization here, moreover, is fully consistent with the Specification, as discussed above. That independent claim 1 includes more words than the phrase the Examiner used to articulate the abstract idea to which the claim is directed is an insufficient basis to persuasively argue that the claim language has been mischaracterized or that the Examiner has otherwise failed to consider all of the limitations of the claim. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016).

An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and

Appeal 2018-006759
Application 10/667,755

sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.

Appellant's argument that the claims amount to improvements to computer performance particularly to processing payments through betting system interfaces. Specifically, Appellant argues that the technique of the claims improves computer performance by processing payments through betting system interface over a network. (Appeal Br. 12). Appellant argues that this technique controls the number of commands and transactions being transmitted over the network and controls computer workload including computer resources such as memory resources, processor resources and network resources such as network bandwidth.

Appellant relies on the teaching in paragraph 66 of the Specification for teaching this improvement. However, this paragraph describes self-service betting machines not improvements to technology.

The other difficulty with Appellant's argument that the claimed invention improves betting interfaces is that we can find no basis for it in the claim or the Specification. Appellant has not directed our attention to a location in the record where there is any suggestion that a problem of computer resources and network resources and bandwidth has been solved by following the recited steps of claim 1. The argument is not only not commensurate in scope with what is claimed but, because the record does not reflect it, amounts to mere attorney argument. Attorney argument, however, cannot take the place of record evidence. *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *Johnston v. IVAC Corp.*, 885 F.2d 1574, 1581 (Fed. Cir. 1989).

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claims do not preempt all processes for achieving the intended result. While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362-63 (Fed. Cir. 2015), cert. denied, 136 S. Ct. 701, 193 (2015) ("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract."). And, "[w]here a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot." *Ariosa*, 788 F.3d at 1379.

We find untimely Appellant's argument in the Reply Brief that the claimed features are not well-understood, routine and conventional and that the claims are analogous to the claims in *CoreWireless Licensing S.A.R.L. v. :G Electronics Mobile Comm U.S.A., Inc.* 880 F.3d 1356 (Fed. Cir. 2018); (Reply Br. 2-5.) We note that these new arguments were raised by Appellant for the first time in the Reply Brief, and they are not in response to a new issue brought up by the Examiner in the Answer. Appellant is reminded that the purpose of a Reply Brief is to ensure the Appellant the opportunity to have the last word on an issue raised by the Examiner. The Reply Brief enables the Appellant to address any new grounds of rejection the Examiner may have raised in the answer, or to address changes or developments in the law that may have occurred after the principal brief was filed. The Reply Brief is *not* an opportunity to make arguments that could have been made during prosecution, but were not. Nor is the Reply Brief an

Appeal 2018-006759
Application 10/667,755

opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not.

Giving cognizance to belated arguments in a reply would vitiate the force of the requirement in Board Rule 37(c)(1)(vii) that “[a]ny arguments or authorities not included in the brief... will be refused consideration by the Board, unless good cause is shown.” The reference in that section to the “reply brief filed pursuant to § 41.41” does not create a right for the Appellant to raise an argument in the reply brief that could have been raised in the principal brief but was not. Rather, that reference merely puts Appellant on notice that arguments that could be made in the reply brief, but are not, are waived. *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010). We therefore consider Appellant’s argument raised in the Reply Brief to be waived.

Accordingly, we sustain the rejection of claim 1 under 35 U.S.C. § 101. We will also sustain the rejection as it is directed to the remaining claims because Appellant does not argue the separate eligibility of the remaining claims.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1, 2, 15, 16, 24–26, 31, 34–49, 54 and 57–69 under 35 U.S.C. § 101.

DECISION

In summary:

| Claims Rejected | 35 U.S.C. § | Basis | Affirmed | Reversed |
|---|--------------------|------------------------------|---|-----------------|
| 1, 2, 15, 16, 24–26, 31, 34–49, 54, 57–69 | 101 | Non-Statutory Subject Matter | 1, 2, 15, 16, 24–26, 31, 34–49, 54, 57–69 | |

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED