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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TOLGA ORAL and ANDREW L. SCHIRMER

Appeal 2018-006769
Application 12/141,435
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL C. ASTORINO, and
TARA L. HUTCHINGS, *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 21–40. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims a computer-implemented method of processing a plurality of events within a calendar application. (Spec. ¶ 4, Title).

Claim 21 is representative of the subject matter on appeal.

21. A computer-implemented method of processing an event within a calendar application executing within a computer hardware system, comprising:

detecting that the event occurs with a period of time, specified by a user, within a calendar data structure associated with the user;

identifying, for the detected event, an attribute;

applying, based upon the identified attribute, a classification to the event;

selecting, after the event is detected and by the calendar application, an event clearing technique from a plurality of event clearing techniques; and

applying, by the calendar application and to the calendar data structure, the selected event clearing technique to the event, wherein the selecting is based upon the classification of the event.

THE REJECTIONS

Claims 21–40 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 21–23, 27–33, and 37–40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Doss (US 2004/0064585 A1, published Apr. 1, 2004) in view of Curbow (US 2004/0088362 A1, published May 6, 2004).

Claims 24 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable Doss in view of Curbow as applied to claims 21–23, 27–33, and 37–40 above, and further in view of Lyle (US 2008/0091504 A1, published Apr. 17, 2008).

Claims 25 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable Doss in view of Curbow, as applied to claims 21–23, 27–33, and 37–40 above, and further in view of Gauger (US 2007/0288292 A1, published Dec. 13, 2007).

Claims 26 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable Doss in view of Curbow, as applied to claims 21–23, 27–33, and 37–40 above, and further in view of Record (US 2007/0136119 A1, published June 14, 2007).

ANALYSIS

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 21–40 under 35 U.S.C. § 101.

The Appellant argues independent claims 21 and 31 together. Appeal Br. 7. We select claim 21 as representative. Claim 31 stands or falls with claim 21. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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. v. CLS Bank Int'l, 573 U.S. 208, 217–18 (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 a practical application. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 50–57 (Jan. 7, 2019) (“*Guidance*”).

The Examiner determines that the claims are directed to collecting and analyzing information. (Final Act. 3–5). The Examiner finds that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception. (Final Act. 5).

The Specification discloses a computer-implemented method of processing a plurality of events within the calendar application which includes receiving a user input (information), specifying a period of time within a calendar associated with a user, detecting a plurality of events

occurring within the period of time (analyzing information), and determining at least one attribute for each of the plurality of events (analyzing information). (Spec. ¶ 4). The method also includes the step of selecting an event clearing technique for each of the plurality of events according to the at least one attribute of each respective event (analyzing information), and the step of executing the selected event clearing technique for each of the plurality of events (analyzing information). (*Id.*).

Consistent with this disclosure, claim 21 recites detecting that the event, specified by a user, occurs within a period of time (receiving and analyzing information), “identifying . . . an attribute” (analyzing information), “applying . . . a classification to the event” (analyzing information), “selecting, . . . an event clearing technique” (analyzing information), and “applying . . . the event clearing technique” (analyzing information).

We thus agree with the Examiner’s findings that the claims are directed to collecting and analyzing information. The steps of claim 21 are steps that “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 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 the claims recite an abstract idea of a mental process.

Turning to the second prong of the “directed to test”, claim 21 requires a “computer hardware system.” The recitation of a “computer hardware system” 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 52. We find no indication in the Specification, nor do Appellant directs us to any indication, that the operations recited in independent claim 21 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 judicial exception into a “practical application,” as that phrase is used in the revised *Guidance*. *See Guidance*, 84 Fed. Reg. at 55.

In this regard, the recitation does not affect an improvement in the functioning of a computer hardware system or other technology, does not recite a particular machine or manufacture that is integral to the claim, and does not transform or reduce a particular article to a different state or thing. *Id.* Thus, claim 21 is directed to a judicial exception that is 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 claim 21 is directed to abstract idea, the claim 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)).

The introduction of a computer hardware system into the claims 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 the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 225. They do not.

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 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 computer components of Appellant’s claim 21 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 21 does not, for example, purport to improve the functioning of the computer hardware system itself. As we stated above, the claims do not affect an improvement in any other technology or technical field. In fact, 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 information access under different scenarios. (*See, e.g.*, Spec. ¶¶ 12–14). Thus, claim 21 at issue amounts to nothing significantly more than instructions to apply the abstract idea of information access using some unspecified, generic computer. 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. 7–12; Reply Br. 2–5) Appellant has submitted concerning the patent eligibility of claim 21. We find that our analysis above substantially covers the substance of all the arguments. However, for purposes of completeness and emphasis, we will address various arguments in order to make individual rebuttals of same.

We agree with Appellant that the fact that one aspect of the claimed invention involves receiving and analyzing data does not render the claimed invention as a whole directed to an abstract idea. (Appeal Br. 10). As

explained in the *Guidance*, 84 Fed. Reg. at 53, a claim that involves or recites a judicial exception or abstract idea is not “directed to” an abstract idea unless the judicial exception recited in the claim is not integrated into a practical application. As claim 21 does not recite an improvement to the computer hardware system recited or any 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, the judicial exception of collecting and analyzing information is not integrated into a practical application. Therefore, as we determined above, claim 21 is directed to an abstract idea.

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the claimed invention involves an improvement to the technology by providing classification-specific clearing techniques that ensure that important tasks or events subject to event clearing are properly addressed. In making this argument, Appellant references paragraph 41 of the Specification. Paragraph 41 of the Specification describes an example in which a project member is going to be on vacation when a task is scheduled to be performed. In this situation, the system assigns the task to another project member. Although this is an improvement to how information is analyzed, it is not an improvement to the computer hardware system of the invention. As such, the alleged improvement lies in the abstract idea itself, not to any technological improvement. *See BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1287–88 (Fed. Cir. 2018).

We are not persuaded of error on the part of the Examiner by Appellant’s argument that there was no finding of preemption. (Reply Br. 4). 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.

Therefore, we sustain the rejection under 35 U.S.C. § 101 of claim 21. We also sustain the rejection of claim 31, which falls with claim 21.

Appellant argues the patent-eligibility of dependent claims 22–30 and 32–40 as a group. Appeal Br. 7 (“[C]laims 22-30 and 32-40 stand or fall together with dependent claim 22[.]”). We select claim 22 as representative, and claims 23–30 and 32–40 stand or fall with claim 22.

Appellant argues that the Examiner fails to establish a *prima facie* rejection of dependent claim 22, because the Examiner does not separately reject dependent claim 22 by identifying its limitations and explaining why its limitations are not substantially more than the abstract idea. (Appeal Br. 12–13). However, consideration of each claim individually does not require a separate written analysis for each individual claim. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1348 (Fed. Cir. 2014) (explaining that when all claims are directed to the same abstract idea, “addressing each claim of the asserted patents [is] unnecessary.”).

Appellant's argument suggests that claim 22 recites additional elements beyond the abstract idea. But we find none. For example, claim 22 further defines the method of claim 21 by reciting that the plurality of attributes are identified for the detected event and that the classification is based upon all of the identified attributes. But these limitations further specify the type of data collected and analyzed. Put simply, the additional limitations further narrow the abstract idea of collecting and analyzing information and, thus, are directed to the same abstract idea as claim 21. We decline to find error in the Examiner's decision to not address the patent-eligibility of claim 22 separately inasmuch as we agree with the Examiner that it is directed to the same abstract idea as claim 21. Therefore, we sustain the rejection of claim 22 under 35 U.S.C. § 101. We also sustain the rejection under 35 U.S.C. § 101 of claims 23–30 and 32–40, which fall with claim 22.

35 U.S.C. §103(A) REJECTIONS

We will not sustain this rejection because we agree with Appellant that the prior art does not describe the step of “selecting, *after the event is detected* . . . an event clearing technique.” The Examiner in the Final Action relies on paragraphs 30, 32, and 35–36 of Doss for teaching that a user can set up rules for employing various clearing techniques. We find that Doss discloses the rules for selecting a clearing technique are established by the user *before* the event is detected. In this regard, Doss teaches that when an event that meets the selection criteria occurs, the specific clearing technique has already been selected by the previously established rules. We note that the Examiner indicates on page 36 of the Final Action that the event clearing

event (i.e. deleting) occurs after the event is detected in Doss. However, claim 21 requires that the *selection* of the event clearing technique occurs *after* the event has been detected. The selection of the event clearing technique occurs *before* the event is detected in Doss because the user sets up the rules for selecting the event clearing technique prior to the event being detected.

In the Answer, the Examiner finds that Curbow at paragraph 33 and claims 18 and 27 also discloses selecting an event clearing technique *after* the event is detected. Paragraph 33 of Curbow describes a set of rules that define characteristics of events and based on those characteristics and rules performs actions. Curbow, like Doss, describes rules that are used to select actions on events that have been selected *prior* to detecting the events. While claim 18 of Curbow recites canceling attendance of any previously accepted meetings that conflict with a calendar invitation and claim 27 recites taking action on events in accordance with a rule, neither claim recites selecting an event clearing technique *after* the event has been selected.

In view of the foregoing, we will not sustain the Examiner's rejection of independent claim 21 and claims 22–30 dependent therefrom under 35 U.S.C. §103(a). We will not sustain the rejection of independent claim 31 and claims 32, 33 and 37-40 for the same reason because each of these claims requires selecting the event clearing technique after the event is detected.

We will not sustain the remaining 35 U.S.C. §103(a) rejections of the remaining claims for the same reason.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 21–40 under 35 U.S.C. § 101.

We conclude the Examiner did err in rejecting claims 21–40 under 35 U.S.C. §103(a).

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
21–40	101	Eligibility	21–40	
21–23, 27–33, 37–40	103(a)	Doss, Curbow		21–23, 27–33, 37–40
24, 34	103(a)	Doss, Curbow, Lyle		24, 34
25, 35	103(a)	Doss, Curbow, Gauger		25, 35
26, 36	103(a)	Doss, Curbow, Record		26, 36
Overall Outcome			21–40	

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