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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YAKOV FAITELSON, OHAD KORKUS, and
OPHIR KRETZER-KATZIR

Appeal 2018-006985
Application 14/456,373
Technology Center 2100

Before JAMES R. HUGHES, MICHAEL R. ZECHER, and
BETH Z. SHAW, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant,¹ Varonis Systems, Inc.,
appeals from the Examiner’s decision to reject claims 1–17 and 27–35.
Final Act. 1. Claims 18–26 were cancelled. Br. 2. We have jurisdiction
under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “Applicant” as defined in
37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Varonis
Systems, Inc. Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to an automatic resource ownership assignment system. Spec. ¶ 6. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An automatic resource ownership assignment system, said system comprising at least one processor and a non-transitory tangible computer-readable medium in which computer program instructions are stored, which instructions, when read by a computer, cause the computer to provide the following functionalities:

resource ownership indicators definition functionality operative to allow an operator of said system to define resource ownership indicators;

automatic resource ownership recommendation functionality operative to provide, to at least one user of said system, which said at least one user has frequently actually accessed at least one resource, a recommendation to assign ownership of said at least one resource to a potential owner, based on said resource ownership indicators; and

automatic resource ownership assignment functionality which, responsive to predetermined at least partial approval of said at least one recommendation by said at least one user and approval of said at least one recommendation by said potential owner, is operative to automatically assign ownership of said at least one resource to said potential owner.

REJECTIONS

Claims 1–17 and 27–35 are rejected under pre-AIA 35 U.S.C. § 101. Final Act. 2–4.

Claims 1–17 and 27–35 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over U.S. 2007 /0143859 A1; published June 21, 2007 (Ogi), U.S. 2005/0086268 A1; published Apr. 21, 2005 (Rogers), and U.S. 2007/0244899 A1; published Oct. 18, 2007 (Faitelson). Final Act. 6–12.

In the Answer, the Examiner withdrew a rejection of claims 1–17 and 27–35 under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre–AIA). Ans. 2.

OPINION

SECTION 101 REJECTION

Appellant argues the §101 rejection based on the claims as a group. Br. 9–11. As permitted by 37 C.F.R. § 41.37, we decide the § 101 rejection based on claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016).

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “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.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claims for an “inventive concept,” “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

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concept] itself.” *Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office recently issued guidance about this framework. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Eligibility Guidance”). Under the guidance, to decide whether a claim is “directed to” an abstract idea, we evaluate whether the claim (1) recites an abstract idea grouping listed in the guidance *and* (2) fails to integrate the recited abstract idea into a practical application. *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 51. If the claim is “directed to” an abstract idea, as noted above, we then determine whether the claim recites an inventive concept. The 2019 Eligibility Guidance explains that, when making this determination, we should consider whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry.” 2019 Eligibility Guidance, 84 Fed. Reg. at 56.

With these principles in mind, we turn to the Examiner’s § 101 rejection.

Abstract idea

Turning to Step 2A, Prong 1, the claim is for an automatic resource ownership assignment system. Claim 1 includes, with emphasis in italics,

resource ownership indicators definition functionality operative to allow an operator of said system to define resource ownership indicators;

automatic resource ownership recommendation functionality operative to *provide*, to at least one user of said system, which said at least one user has frequently actually accessed at least one resource, *a recommendation to assign*

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ownership of said at least one resource to a potential owner, based on said resource ownership indicators; and

automatic resource ownership assignment functionality which, responsive to predetermined at least partial approval of said at least one recommendation by said at least one user and approval of said at least one recommendation by said potential owner, is operative to automatically assign ownership of said at least one resource to said potential owner.

Claim 1 recites an abstract idea grouping listed in the 2019 Eligibility Guidance: “mental processes.” *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 52, 53 (listing “[m]ental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion)” as one of the “enumerated groupings of abstract ideas” (footnote omitted)). The guidance explains that “mental processes” include acts that people can perform in their minds or using pen and paper, even if the claim recites that a generic computer component performs the acts. *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 52 n.14 (“If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind.”); *see also Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”), *quoted in* 2019 Eligibility Guidance, 84 Fed. Reg. at 52 n.14; *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d. 1314, 1324 (Fed. Cir. 2016) (holding that computer-implemented method for “anonymous loan shopping” was an abstract idea because it could be “performed by humans

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without a computer”); *quoted in* 2019 Eligibility Guidance, 84 Fed. Reg. at 52 n.14.

The method recited in claim 1 executes steps that people can perform in their minds or using pen and paper. A person can perform the italicized steps of claim 1 by using his or her mind (or pen and paper) in the claimed manner. For example, a person can “define resource ownership indicators,” using his or her mind or pen and paper. A person can provide “a recommendation to assign ownership of said at least one resource to a potential owner, based on said resource ownership indicators” using his or her mind or pen and paper. A person can, using his or her mind or pen and paper, “assign ownership of said at least one resource to said potential owner” “responsive to predetermined at least partial approval of said at least one recommendation by said at least one user and approval of said at least one recommendation by said potential owner.” Accordingly, claim 1 recites a mental process and thus an abstract idea.

Turning to Step 2A, Prong 2, the remaining elements recited in claim 1 do not integrate the abstract idea into a practical application. In addition to the steps discussed above, claim 1 recites “at least one processor,” “a non-transitory tangible computer-readable medium in which computer program instructions are stored” and “a computer.”

The written description discloses that the recited system encompasses generic and known computer components. *See, e.g.*, Spec. ¶ 34 (listing simply “an enterprise computer network including multiple disparate clients, data storage elements, computer hardware resources and computer software resources”). Simply programming a general-purpose computer to perform abstract ideas does not integrate those ideas into a practical application. *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 55 (identifying “merely

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includ[ing] instructions to implement an abstract idea on a computer” as an example of when an abstract idea has not been integrated into a practical application).

Moreover, despite Appellant’s argument to the contrary (Br. 11), we are not persuaded that the claimed invention improves the computer or its components’ functionality or efficiency, or otherwise changes the way those devices function, at least in the sense contemplated by the U.S. Court of Appeals for the Federal Circuit in *Amdocs (Israel) Ud. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016). In *Amdocs*, the Federal Circuit determined the “claim entails an unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases).” *Amdocs*, 841 F.3d at 1300. To the extent Appellant contends that the claimed invention improves a computer’s functionality or efficiency, or otherwise changes the way a computer functions, there is no persuasive evidence on this record to substantiate such a contention.

Thus, the claims do not integrate the judicial exception into a practical application because the claims (1) do not improve the functioning of a computer or other technology, (2) are not applied with any particular machine (except for a generic computer), (3) do not effect a transformation of a particular article to a different state or thing, and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim, as a whole, is more than a drafting effort designed to monopolize the exception. *See* Manual of Patent Examination Procedure §§ 2106.05(a)–(c), (e)–(h).

Inventive Concept

Because we determine claim 1 is “directed to” an abstract idea, we consider whether claim 1 recites an “inventive concept.” The Examiner determined claim 1 does not recite an inventive concept because the additional elements in the claim do not amount to “significantly more” than the abstract idea itself. *See* Final Act. 3–4.

We agree. The additional elements recited in the claim include the “at least one processor,” “a non-transitory tangible computer-readable medium in which computer program instructions are stored” and “a computer.” The claim recites these elements at a high level of generality, and the written description indicates that the system is made up of generic computer components. *See, e.g.*, Spec. ¶ 34. Using generic computer components to perform abstract ideas does not provide the necessary inventive concept. *See Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”). Thus, these elements, taken individually or together, do not amount to “significantly more” than the abstract idea itself.

To the extent Appellant contends various elements recited in the claim provide the necessary “inventive concept,” these elements form part of the recited abstract idea and thus are not “additional elements” that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78); *see also* 2019 Eligibility Guidance, 84 Fed. Reg. at 55 n.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 added)).

Rather, the recited system includes additional recited element whose generic computing functionality is well-understood, routine, and

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conventional. *See Intellectual Ventures*, 792 F.3d at 1368 (noting that a recited user profile (i.e., a profile keyed to a user identity), database, and communication medium are generic computer elements); *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (noting that components such as an “interface,” “network,” and “database” are generic computer components that do not satisfy the inventive concept requirement); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”). *Accord* Final Act. 13 (citing Spec. ¶¶ 57–58). Appellant’s arguments does not persuade us claim 1 is “directed to” a patent-eligible concept.

Moreover, even assuming, without deciding, that the claimed invention can assign resource ownership in a system faster than doing so manually (e.g., due to the recited “automatic” “functionality”), any speed increase comes from the capabilities of the generic computer components—not the recited process itself. *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (citing *Bancorp Servs, LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”)); *see also Intellectual Ventures I LLC v. Erie Indemnity Co.*, 711 F. App’x 1012, 1017 (Fed. Cir. 2017) (unpublished) (alteration in original) (“Though the claims purport to accelerate the process of finding errant files and to reduce error, we have held that speed and accuracy increases stemming from the ordinary capabilities of a general-purpose computer ‘do[] not materially alter the patent eligibility of the claimed subject

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matter.’’). Like the claims in *FairWarning*, the focus of claim 1 is not on an improvement in computer processors as tools, but on certain independently abstract ideas that use generic computing components as tools. *See FairWarning*, 839 F.3d at 1095 (citations and quotation marks omitted).

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 claims 1–17 and 27–35 under 35 U.S.C. § 101.

SECTION 103(a) REJECTION

Appellant generally argues the combination of Ogi, Rogers, and Faitelson fails to teach or suggest,

automatic resource ownership recommendation functionality operative to *provide, to at least one user of said system, which said at least one user has frequently actually accessed at least one resource, a recommendation to assign ownership of said at least one resource to a potential owner*, based on said resource ownership indicators, as recited in claim 1.

Br. 14 (emphasis added).

The Examiner relies on the combined teachings of Ogi and Faitelson to account for the aforementioned limitation. Final Act. 6–7. That is, the Examiner finds Ogi teaches utilizing an access control list that indicates the access right of a user or group to access an object (i.e., resource ownership indicators). Ans. 7 (citing Ogi ¶¶ 16, 22–24). Ogi also teaches reassigning access rights to a user or a newly created group, which teaches “automatic resource ownership recommendation functionality operative to provide, to at least one user of said system” a recommendation to assign ownership. *Id.* The Examiner finds that Faitelson teaches accessing history information for the folder, which we agree would permit a person of ordinary skill in the art

to determine “at least one user [who] has frequently actually accessed at least one resource,” as recited in claim 1. *Id.* at 8; Final Act. 7; Faitelson ¶ 38.

In the absence of sufficient evidence or any line of technical reasoning to the contrary, we agree with the Examiner’s findings for the reasons in the Final Rejection and Answer, and we find no reversible error. Accordingly, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103. We also sustain the Examiner’s obviousness rejection of claims 2–17 and 27–35 because Appellant has not presented separate patentability arguments or has reiterated substantially the same patentability arguments as those discussed for of claim 1.

DECISION

The Examiner’s rejections are affirmed.

More specifically, we affirm the Examiner’s rejection of claims 1–17 and 27–35 are rejected under 35 U.S.C. § 101. We also affirm the Examiner’s rejection of claims 1–17 and 27–35 under pre-AIA 35 U.S.C. § 103(a).

DECISION SUMMARY

Claims Rejected	Basis	Affirmed	Reversed
#1–17 and 27–35	§ 101	#1–17 and 27–35	
#1–17 and 27–35	§ 103(a)	#1–17 and 27–35	
Overall Outcome		#1–17 and 27–35	

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FINALITY AND RESPONSE

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