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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEITH M. MANTEY and WEI WEI JEANG

Appeal 2018-008138
Application 14/221,573
Technology Center 2100

Before MICHAEL J. STRAUSS, HUNG H. BUI, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner's decision to reject claims 1–25. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We refer to the Specification, filed March 21, 2014 (“Spec.”); Final Office Action, mailed August 30, 2017 (“Final Act.”); Advisory Action, mailed December 8, 2017 (“Advisory Act.”); Appeal Brief, filed February 20, 2018 (“Br.”); and Examiner's Answer, mailed May 25, 2018 (“Ans.”).

² We use the word “Appellant” to refer to “Applicants” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Keith M. Mantey and Wei Wei Jeang, the inventors of the above-referenced application. Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to an email message system having a user interface enabling an information element to be associated with a selected email message. Abstract. Claim 1, reproduced below with claim element labels added and a disputed limitation emphasized in *italics*, is illustrative of the claimed subject matter:

1. A message system comprising:
 - [(a)] a non-transitory computer-readable medium configured to store a plurality of computer instructions;
 - [(b)] a central processing unit of a user device adapted to access the non-transitory computer-readable medium and execute the plurality of computer instructions;
 - [(c)] a user interface adapted to display, in a first area on a screen, a collection of at least one email message that has been sent or received by a user via the user device;
 - [(d)] the user interface adapted to enable user input from the user to select a particular email message from the collection; and
 - [(e)] *the user interface adapted to enable user input from the user to associate at least one information element previously unassociated with the selected email message to now be associated with the selected email message.*

REFERENCES³

The prior art relied upon by the Examiner is:

Muller	US 2008/0313296 A1	Dec. 18, 2008
Brezina et al.	US 2009/0030872 A1	Jan. 29, 2009
Dicke et al.	US 2010/0281057 A1	Nov. 4, 2010
Harrington	US 2011/0099495 A1	Apr. 28, 2011
Foresti	US 2013/0297645 A1	Nov. 7, 2013
Jensen et al.	US 2014/0046966 A1	Feb. 13, 2014

³ All citations herein to these references are by reference to the first named inventor only.

REJECTIONS

Claims 1–25 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception (i.e., an abstract idea) without significantly more. Final Act. 2–3.

Claims 1, 2, 4–10, 13, 14, 16–22, and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brezina and Dicke. Final Act. 4–13.

Claims 3 and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brezina, Dicke, and Jensen. Final Act. 13–14.

Claim 11 stands rejected under 35 U.S.C. § 103 as being unpatentable over Brezina, Dicke, and Harrington. Final Act. 14–15.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Brezina, Dicke, and Foresti. Final Act. 15–16.

Claims 23 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brezina, Dicke, and Muller. Final Act. 16–18.

ANALYSIS

Except as noted, we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 2–18; Advisory Act. 2; Ans. 3–19) and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (Ans. 19–25) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

35 U.S.C. § 101

Appellant’s contentions are unpersuasive with regard to the rejection of claims 1–25 under 35 U.S.C. § 101. Section 101 defines patentable subject matter: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. The U.S. Supreme Court, however, has “long held that this provision contains an important implicit exception” that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (quotation omitted). “Eligibility under 35 U.S.C. § 101 is a question of law, based on underlying facts.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018).

To determine patentable subject matter, we undertake a two part test. “First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts” of “laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). “The inquiry often is whether the claims are directed to ‘a specific means or method’ for improving technology or whether they are simply directed to an abstract end-result.” *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017). A court must be cognizant that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas” (*Mayo*, 566 U.S. at 71), and “describing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016).

Instead, “the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

If the claims are directed to an abstract idea or other ineligible concept, then we continue to the second step and “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.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78). The Court describes the second step 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.’” *Id.* (quoting *Mayo*, 566 U.S. at 72–73).

The Office recently published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance, we look to whether the claim recites

- (1) a judicial exception, such as a law of nature or any of the following groupings of abstract ideas:
 - (a) mathematical concepts, such as mathematical formulas;
 - (b) certain methods of organizing human activity, such as a fundamental economic practice; or
 - (c) mental processes, such as an observation or evaluation performed in the human mind;

- (2) any additional limitations that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)); and
- (3) any additional limitations beyond the judicial exception that, alone or in combination, were not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)).

See Revised Guidance, 84 Fed. Reg. at 52, 55, 56. Under the Revised Guidance, if the claim does not recite a judicial exception, then it is eligible under § 101, and no further analysis is necessary. *Id.* at 54. Similarly, under the guidance, “if the claim as a whole integrates the recited judicial exception into a practical application of that exception,” then no further analysis is necessary. *Id.* at 53, 54.

In connection with Step 2A the Examiner determines the claims are directed to an abstract idea of displaying [an] email message and associate[ing] information related to the email based on the user input. The underlying concept is merely collecting information, analyzing it, and display[ing] certain results – this concept is not meaningfully different than those concepts found by the courts to be abstract.

Final Act. 2–3. In connection with Step 2B the Examiner determines “[t]he claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as a combination do not amount to significantly more than the abstract idea.” *Id.*

Appellant argues “the claims are directed to an improvement of an email system and is thus not an abstract idea.” Ans. 13 (citing MPEP § 2106.04(a); *Enfish*, 822 F.3d at 1339). According to Appellant, “[c]laim 1 is directed to an improvement to the computer user interface, and more

specifically, improving how information can be linked or associated with email messages so information can be found easier and used.” *Id.* Appellant argues, unlike the decisions in *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015) and *Bilski v. Kappos*, 561 U.S. 593, 611 (2010), the claims are not directed to fundamental economic and conventional business practices or to classifying and storing digital images as in *In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607 (Fed. Cir. 2016).

The Examiner responds, finding that

The claims [are] not on an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools (e.g., using the computer as a tool in a conventional industry practice) because sending email and receiving email and enable[ing] user input to associate information previously unassociated with the email message to be associated with the message are common practice for people with the ordinary skill in the art.

Ans. 20. The Examiner also disagrees the claims recite additional elements sufficient to amount to significantly more than the judicial exception, finding “[a]lthough the [S]pecification may provide evidence of an improvement in computer-related technology (e.g., an improvement to the functionality of the computer itself) beyond an abstract idea, the features that would provide such an improvement are absent from the claim.” *Id.*

USPTO Step 2A, Prong 1

Claim 1 initially recites (a) a non-transitory computer-readable medium configured to store a plurality of computer instructions and (b) a central processing unit of a user device adapted to access the non-transitory computer-readable medium and execute the plurality of computer instructions. The first two elements, the medium and processing unit, are

conventional computer components described at a high level of generality. *See, e.g.*, Spec. ¶¶ 26–27; *cf.* Br. 5. Likewise, the recited user interface “adapted to (c) display . . . at least one email message” and “(d) enable user input . . . to select a particular email message” is also described at a high level of generality. *See, e.g.*, Spec. ¶ 12; *cf.* Br. 5. The final functionality required of the user interfaces is that it be (e) adapted to enable user input from the user to associate at least one information element previously unassociated with the selected email message to now be associated with the selected email message.

Under Prong 1 of our Revised Guidance, we determine whether the claim recites a recognized judicial exception. Element (a) is hardware. Elements (b) through (d) involve retrieving data from memory, following instructions, displaying information, and accepting input from a user, all functions that are capable of being performed in the human mind or by a human using pen and paper. For example, accessing memory and following instructions (element (b)) and displaying data (element (c)) can be performed by a person using pen and paper. Likewise, accepting input (observing) can be performed as a mental process. Claim element (e) includes associating an information element (e.g., “notes, files, tasks, contacts, email messages, calendar items, pictures, and web-based resources” (Spec. ¶ 12)) previously unassociated with a selected email message to now be associated with the selected email message. Associating objects involves observation of the objects and can be performed as a mental process performed in the human mind. Thus, consistent with the Examiner’s determination that the claims recite the concept of associating information related to an email based on user input (Final Act. 3), we find such

associations can be accomplished as a series of mental processes in the human mind and/or using pen and paper.

For the reasons discussed above, claim 1 recites mental processes that are considered to be an abstract idea under the Revised Guidance.

USPTO Step 2A, Prong 2

We are unpersuaded the claims integrate the judicial exception into a practical application. In particular, claim 1 requires particular hardware for (a) storing, (b) accessing information and executing instructions, (c) displaying data, and (d) inputting selection data, and (e) inputting association data. However, the hardware and required functionalities are recited at a high level of generality, e.g., (a) a non-transitory computer-readable medium configured to store a plurality of computer instructions (i.e., memory); (b) a central processing unit of a user device adapted to access the non-transitory computer-readable medium and execute the plurality of computer instructions; and (c–e) a user interface adapted to display information and accept input from a user. These limitations do not constitute additional elements that integrate the judicial exception into a practical application. *See* MPEP §§ 2106.05(a)–(c), (e)–(h).

Appellant’s contention that “claim 1 is directed to a specific improvement of a user interface functionality of the computer” (Br. 13) is unsupported by sufficient evidence or explanation to be persuasive. Appellant fails to direct attention to and we do not ascertain any technological aspect recited by the claims other than the generic automation of a mental process of associating or linking a message with other information selected by a user as related to the message. If, as argued, claim 1 provides an “improved computer user interface functionality to

better search, identify, and access information by linking the information items to email messages” (*id.*), Appellant provides insufficient evidence or reasoning explaining how the interface is improved. Mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record. Contrary to Appellant’s argument, we find the interface is claimed as a functionality that merely enables the underlying concept of displaying an email message and associating information related to the email based on the user input. *Cf.* Final Act. 3.

We are also unpersuaded by Appellant’s citations to prior decisions determining claims to be directed to patent-eligible subject matter because the cited decisions address subject matter distinguishable over the Appellant’s invention. Br. 13. Addressing the *Enfish* decision, the Federal Circuit relied on the distinction made in *Alice* between improvements to computer functionality and uses of existing computers as tools in aid of processes focused on “abstract ideas.” *See Enfish*, 822 F.3d at 1335–36; *see also Alice*, 573 U.S. at 222. The present case is different from *Enfish* because the focus of the claims here is not on an improvement in computers as tools or upon an innovative way to use computers or other devices; instead, the claims are directed to the underlying concept of associating a displayed message with related information that uses generic computer equipment as tools.

Addressing *McRO* (see Br. 13), the claims therein recited a “specific . . . improvement in computer animation” using “unconventional rules that relate[d] sub-sequences of phonemes, timings, and morph weight sets.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1302–03, 1307–08, 1314–15 (Fed. Cir. 2016). Moreover, it was not the mere presence of unconventional rules in *McRO* that led to patent eligibility; rather, it was that the rules were used “in a process specifically designed to achieve an improved technological result.” *Id.* at 1316. Here, Appellant has not shown “how the claimed invention[] solves a problem associated with conventional implementations” (Br. 13) or otherwise achieves an improved technological result.

Appellant’s contention the claims do not attempt to monopolize the abstract idea is also unpersuasive. *See id.* at 14. As an initial matter, the claims are so broad as to seemingly cover substantially all methods of a user selectively associating information and an email message. Furthermore, even if otherwise, preemption is not a stand-alone test for eligibility. Although preemption “‘might tend to impede innovation more than it would tend to promote it,’ thereby thwarting the primary object of the patent laws” (*Alice*, 573 U.S. at 216 (quoting *Mayo*, 566 U.S. at 71)), “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.*, 788 F.3d at 1362–63 (“[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.”).

For the reasons discussed, the claims do not include additional elements that integrate the judicial exception into a practical application

because the additional elements (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; 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* MPEP §§ 2106.05(a)–(c), (e)–(h); Instead, any improvement proffered is to the underlying idea of displaying an email message and associating information related to the email based on the user input. Thus, claim 1 does not integrate the judicial exception into a practical application.

USPTO Step 2B

Because claim 1 recites a judicial exception and does not integrate that exception into a practical application, we must then reach the issue of whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field.

Revised Guidance, 84 Fed. Reg. at 56.

The Examiner finds:

The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as a combination do not amount to significantly more than the abstract idea. For example, independent claim 1 and claim 13, claim 25 recite the additional elements of “associate at least one information element previously unassociated with the selected message to now be associated with the selected message” which is still generic functions of displaying email message and associate information related to the email based on the user input. Generic displaying functions,

without an inventive concept, do not amount to significantly more than the abstract idea. Looking at the elements as a combination does not add anything more than the elements analyzed individually. Therefore, these claims do not amount to significantly more than the abstract idea itself.

Final Act. 3; *see also* Ans. 20.

We agree with the Examiner. Appellant has not identified any specific limitations of claim 1 that is not “well-understood, routine, conventional” in the field as per MPEP § 2106.05(d). Instead, Appellant describes the invention in a manner consistent with its being “well-understood, routine, [and] conventional,” such that the claimed email message system requires no more than a general-purpose computer executing computer program instructions. Spec. ¶ 26; *see also* Spec. ¶¶ 13–19 (describing possible embodiments of the invention at a high level in terms of well-known, commonplace, and generic computing platforms). Consistent with Appellant’s Specification, claim 1’s various computer elements fail to go beyond that which is well-understood, routine, and conventional. It is indicative of the absence of an inventive concept where the claims simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Revised Guidance, 84 Fed. Reg. at 56. Furthermore, the functionalities recited by claim 1 are recited at a high level of generality that do not set forth limited rules for implementing the functionalities sufficient to confer patent eligibility.

Therefore, we conclude claim 1, viewed “both individually and as an ordered combination,” does not recite significantly more than the judicial exception to transform the claim into patent-eligible subject matter. *See*

Alice, 573 U.S. at 217 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 79).

Accordingly, for the reasons discussed, claim 1 is directed to mental processes identified as abstract ideas. Furthermore, the claims do not recite limitations that amount to significantly more than the abstract idea itself. Accordingly, we sustain the rejection of independent claim 1 under 35 U.S.C. § 101 and, for the same reasons, the rejection of independent claims 13 and 25, together with the rejection of dependent claims 2–12 and 14–24, which are not argued separately with particularity. *See* Br. 15.

35 U.S.C. § 103

The Examiner finds Brezina teaches the email system of claim 1 except that it “fails to explicitly teach ‘associate at least one information element previously unassociated with the selected message to now be associated with the selected message.’” Final Act. 5. The Examiner applies Dicke’s user selection of a link (Dicke ¶ 73) associated with an email to associate other information (e.g., map, address book, phone number, direction, name or company (*see* options listed in Dicke, Fig. 5D)) for curing the noted deficiency of Brezina. *Id.*

Appellant contends Dicke automatically creates a hyperlink thereby not providing for user input to associate an information element with an email message. Br. 17.

Decke [sic] discloses the ability for its email application to automatically recognize a valid street address that is already in the email message, and to automatically create a hypertext link using the address as an anchor, so that clicking on the address text automatically causes a map showing that address location to be displayed. Therefore, although selecting the existing text within the email message causes the map to be displayed, the

function of associating the address text to a location on a map is automatically performed and not done by the user. The user does not perform any action that resulted in an association of a hypertext link to that address in the email text. The user's selection of the address text is not an input that associates the address with the hypertext link to the map.

Id. (emphasis omitted).

In response, the Examiner explains it is the user's *selection* of the link that points to a menu of selectable options (i.e., not the creation of the link) that teaches the disputed user input associating a previously unassociated information element (e.g., map, directions, telephone number, name) with the selected email. Ans. 21–22 (citing Dicke ¶¶ 27, 73).

Appellant's contention is unpersuasive of reversible error. The disputed limitation (e) of claim 1 only requires user input to associate an information item with a selected email message, not user selection of the information to be associated. Thus, user initiation of an application (user input) that automatically associates messages with information (e.g., addresses) which messages are then selected by the user satisfies the argued functionality of disputed limitation (e). Accordingly, under a broad but reasonable interpretation, Appellant's argument that claim 1 requires manual user input to directly associate (e.g., select) information with a message is not commensurate in scope with claim 1 and is, therefore, unpersuasive.

Furthermore, even if claim 1 were interpreted as narrowly as argued, Appellant's argument is unpersuasive nonetheless. As explained by the Examiner, by a user selecting a system-generated link (or selecting one of the objects pointed to by the system-generated link), Dicke teaches the disputed requirement to enable user input to associate at least one information element previously unassociated with the selected message to

now be associated with the selected message. Final Act. 5, Ans. 21–22 (citing Dicke ¶ 73). Accordingly, we agree with the Examiner that the combination of Brezina and Dicke teaches or suggests limitation (e) of claim 1.

Appellant’s arguments in connection with independent claim 13 (Br. 18–19) and independent claim 25 (*id.* at 19–20) are repetitive of those presented in connection with claim 1 and are unpersuasive for the same reason. Dependent claims 4–12, 14, and 16–24 are not argued separately but, instead, on the basis of their respective base independent claim. *Id.* at 18, 19, 21–22.

Appellant’s contention of error in connection with claim 2 (*id.* at 18) is unpersuasive because Appellant fails to address the Examiner’s findings. Merely reciting a claim limitation and asserting it is not present falls short of identifying an error in the Examiner’s rejection as required on appeal. “Filing a Board appeal does not, unto itself, entitle an appellant to *de novo* review of all aspects of a rejection.” *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (internal citations omitted). Arguments must address the Examiner’s action. 37 C.F.R. § 41.37(c)(1)(iv) (“The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant.”)

Appellant’s contentions of error in connection with the rejection of dependent claims 3 and 15 include (i) argument repetitious of those presented in connection with claim 1 and (ii) the mere recitation of claim limitations without identifying specific error in the rejection. *See* Br. 20–21. Such argument is unpersuasive. In connection with claim 15, Appellant further alleges “there is no suggestion or motivation for the email systems

taught by Brezina and Decke [sic] to collect publisher descriptor data [as disclosed by Jensen].” *Id.* at 20. Such allegations of error without argument addressing the Examiner’s findings are unpersuasive. In particular, Appellant fails to address the Examiner’s finding that “[t]he motivation to combine [Jensen with Dicke-Brezina is] at least because Jensen’s capability to link data from podcast and pin data on Pinterest would help to provide more content related to the user’s interest into Dicke and Brezina’s messaging system.” Final Act. 14. Accordingly, Appellant’s argument against the combination is also unpersuasive.

For the reason discussed above, we sustain the rejections of claims 1–25 under 35 U.S.C. § 103.

DECISION

We affirm the Examiner’s rejections under 35 U.S.C. §§ 101 and 103.

Claims Rejected	Basis	Affirmed	Reversed
1–25	35 U.S.C. § 101	1–25	
1, 2, 4–10, 13, 14, 16–22, 25	35 U.S.C. § 103 Brezina, Dicke	1, 2, 4–10, 13, 14, 16–22, 25	
3, 15	35 U.S.C. § 103 Brezina, Dicke, Jensen	3, 15	
11	35 U.S.C. § 103 Brezina, Dicke, Harrington	11	
12	35 U.S.C. § 103 Brezina, Dicke, Foresti	12	
23, 24	35 U.S.C. § 103 Brezina, Dicke, Muller	23, 24	
Overall Outcome		1–25	

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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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED