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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS MICHAEL COZAD

Appeal 2018-008163
Application 14/321,498
Technology Center 3600

Before THU A. DANG, ELENI MANTIS MERCADER, and
JASON J. CHUNG, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellants request rehearing under 37 C.F.R. § 41.52 of our Decision, mailed on October 10, 2019 (“Decision”), in which we affirmed the Examiner’s rejection under 35 U.S.C. § 101 of claims 1–12, 14–19, 21, and 22. Appellants timely filed a Request for Rehearing (“Req. Reh’g”) on December 2, 2019.

Appellants argue that we did not further label the particular subgroup of organizing human activity and request that we reopen prosecution. Req. Reh’g 3–4. In particular Appellants argue that the 2019 Guidance lists three subgroups under the category of certain methods of organizing human activities: (1) fundamental economic principles, (2) commercial or legal

interactions, and (3) managing personal behavior or relationships. *Id.* at 4 (citing to 2019 Guidance at 52). Appellants assert that the Decision failed to identify a specific subgroup or provide any real analysis of how the specific limitations can be considered a method of organizing human activity. *Id.*

As we stated in our Decision the particular limitations of claim 1 we identified, under broadest reasonable interpretation, provide a process that allows a user to collect and generate store location information, which is a method of organizing human activity. Dec. 9. We further stated that the method determines the total number of shelves for each distinct section in an aisle, generates a data structure that represents the aisles of the store with placeholders for product location information and generates a map from the data structure by populating the placeholders *with the product location information*. Dec. 9 (citing Ans. 4). Accordingly, we explained with specificity which claim limitations constituted an abstract idea under the group of organizing human activity. *Id.* While we did not explicitly state the subgroup of commercial interactions such as sales activities or interactions, since we identified the method of organizing human activity of product location information this is tantamount to the subgroup of commercial interactions which is the only subgroup label that can be attached to the method of identifying product location information in a store.

The Federal Circuit has repeatedly noted that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The Examiner satisfies the burden of establishing a prima facie case under 35 U.S.C. § 132 by setting forth a rejection in a sufficiently articulate and informative

manner. *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). If the Examiner “adequately explain[s] the shortcomings . . . the burden shifts to the applicant to rebut the prima facie case with evidence and/or argument.” *Hyatt*, 492 F.3d at 1370.

The Answer adequately explains the § 101 rejection by concluding the present claims recite certain methods of organizing human activity. Ans. 4. The Examiner’s statements satisfy § 132(a) because they apply the *Alice* analytical framework and apprise Appellants of the reasons for the § 101 rejection under that framework categorizing the abstract idea as a process that allows a user to collect and generate store location information, which is a method of organizing human activity, and in particular a method that determines the total number of shelves for each distinct section in an aisle, generates a data structure that represents the aisles of the store with placeholders for product location information and generates a map from the data structure by populating the placeholders *with the product location information*. See Dec. 9 (citing Ans. 4). While the guidelines provide examples of subgroups to guide us identify the category of the abstract idea, the guidelines do not require a subgroup identification but rather the subgroupings provide guidance as to what types of activities can be categorized under the groupings of mathematical concepts, certain methods of organizing human activity, and mental processes. The guidelines require categorization under the “enumerated groupings” of abstract ideas (*see* 2019 Guidance at 53), there is no requirement of subgroupings identification.

Appellants further disagree that the recited automatically updateable user interface and automatically map generation are generic computer functions. Req. Reh’g 5. Appellants assert that the elements identified in

our Decision, and others in the claim, improve the functioning of the computing device used to collect store information. *Id.* These elements also define and require a particular machine that is integral to the claim. *Id.* Appellants further argue that the fact that a particular machine is defined and required by the claims is even more clear with respect to dependent claims 21 and 22, which respectively lay out a specific application of machine learning and additional highly specific aspects of the user interface. *Id.*

We do not agree with Appellants' argument. As we stated in our analysis under Step 2A, prong 2-i.e., we determine whether the method of organizing human activity is integrated into a practical application. Dec. 9. As we stated in our Decision, the mere nominal recitation of a generic "in a mobile computing device," "a user interface," and "a bar code scanner" at a high level of generality does not take the claim out of the method of organizing human activity pertaining to generating a map of store location information. *Id.* The mere nominal recitation of a generic mobile computing device and the use of a GUI to enter the items into a computer listing does not take the claim limitation out of the organizing human activity grouping. *Id.* Similar to *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015), "relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible." *See also Alice*, 573 U.S. at 224 ("use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions" is not an inventive concept). Simply adding a 'computer aided' limitation to a claim covering an abstract concept, without more, is insufficient to render the claim patent eligible." *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). *Id.* at 9–10.

As we previously stated, “automatically updatable” user interface may more efficiently collect and generate store location information than can be accomplished manually, the additional elements continue to operate in their ordinary capacity by performing generic computer functions. *Id* at 10. Additionally, merely automatically generating a map based on a data structure that represents the aisles of the store based on the shelf counts received for sections of each of the aisles of the store comes from the capabilities of the generic computer components, and 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) (“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 matter.’”). *Id.* 10–11. Simply implementing the abstract idea on a generic computer is not a practical application of the abstract idea under Step 2A, prong 2. *Id.* at 11.

A request for rehearing “must state with particularity the points believed to have been misapprehended or overlooked by the Board.” 37 C.F.R. § 41.52(a)(1); *see Ex parte Quist*, 95 USPQ2d 1140, 1141 (BPAI 2010) (precedential). A request for rehearing is not an opportunity to express disagreement with a Board decision or rehash arguments previously

presented. See 37 C.F.R. § 41.52(a)(1). Here, Appellants’ Request does not persuade us of any points we misapprehended or overlooked in the Decision, or that we misapplied the relevant law.

In summary, we grant the Request to the extent that we have reconsidered the record, however, we decline to modify our prior Decision in any respect. Accordingly, the Request for Rehearing is denied.

Outcome of Decision on Rehearing:

| Claims | 35 U.S.C. § | Reference(s)/Basis | Denied | Granted |
|-------------------------|--------------------|---------------------------|-------------------------|----------------|
| 1–12, 14–19, 21, and 22 | 101 | | 1–12, 14–19, 21, and 22 | |
| Overall Outcome | | | 1–12, 14–19, 21, and 22 | |

Final Outcome of Appeal after Rehearing:

| Claims | 35 U.S.C. § | Reference(s)/Basis | Affirmed | Reversed |
|-------------------------|--------------------|---------------------------|-------------------------|-----------------|
| 1–12, 14–19, 21, and 22 | 101 | | 1–12, 14–19, 21, and 22 | |
| Overall Outcome | | | 1–12, 14–19, 21, and 22 | |

REHEARING DENIED