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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DERICK DOUGLAS SCHAEFER

Appeal 2018-008817
Application 14/865,320
Technology Center 2400

Before DAVID M. KOHUT, IRVIN E. BRANCH, and
JOSEPH P. LENTIVECH, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner's decision to reject claims 1–20. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ We reference, herein, the Final Action mailed July 2, 2018 (“Final”), Appeal Brief filed April 25, 2018 (“Br.”), Examiner’s Answer mailed July 18, 2018 (“Ans.”), Reply Brief filed September 13, 2018 (“Reply”), and Specification filed September 25, 2015 (“Spec.”).

² According to Appellant, the real party in interest is “NCR Corporation.” Br. 2.

STATEMENT OF THE CASE

APPELLANT’S INVENTION

The subject matter relates to “validat[ing] that all Uniform Resource Locators (URLs) in [a] site map are devoid of malware and that [a respective] domain name is owned by an entity fulfilling a trust criterion.” Spec. ¶ 2. Claim 1 is illustrative of the claimed invention and reproduced, below, with emphasis on “additional elements” (explained *infra*).

1. A method, comprising:

receiving a request *via a network*, the request specifying a domain name and a site map of the domain name;

validating, *with a processor*, that all Uniform Resource Locators (URLs) in the site map are devoid of malware and that the domain name is owned by an entity fulfilling a trust criterion; and

publishing a document *to a network-accessible location*, the document certifying that the domain name and all URLs in the site map are devoid of malware and that the domain name is owned by the entity fulfilling the trust criterion.

Br. 19 (claims appendix).

REJECTIONS

Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final 9–12.

Claims 1–20 stand rejected under 35 U.S.C. § 103 as obvious over Hughes (US 2010/0287231 A1; Nov. 11, 2010) and Bokarius (US 2014/0181931 A1; June 26, 2014). Final 12–32.

REJECTION UNDER 35 U.S.C. § 101

PRINCIPLES OF LAW

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.

However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation marks and citation omitted).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and, thus, patent-ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent-eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India

rubber, smelting ores” (*id.* at 184 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (internal citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77).

“[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

PTO GUIDANCE

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

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (MPEP) § 2106.05(a)–(c), (e)–(h) (9th Ed., Rev. 08.2017, Jan. 2018)).

See Guidance, 84 Fed. Reg. at 52, 54–55. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, we conclude the claim is directed to a judicial exception (*id.* at 54) and then look to whether the claim:

- (3) adds a specific limitation or combination of limitations beyond the judicial exception that are not “well-understood, routine, conventional” activity in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance, 84 Fed. Reg. at 56.

ANALYSIS

Claim 1 is representative of the group comprising claims 2–20, as Appellant does not argue any of the other claims with particularity for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(iv). There is no dispute that claim 1 falls within a category of patentable subject matter. *See* 35 U.S.C. § 101 (“process, machine, manufacture, or composition of matter”); *see also* Guidance, 84 Fed. Reg. at 53–54 (“Step 1”). We accordingly turn to the issues raised by the Guidance and Appellant’s arguments.

Step 2A, Prong One:³ Does the Claim Recite Any Judicial Exceptions?

Turning to the first issue set forth by the Guidance (*see supra* 5, bullet “(1)”), we agree with the Examiner that claim 1 recites judicial

³ The Guidance separates the enumerated issues (1) to (4) (*see supra* 6) into Steps 2A(1), 2A(2), and 2B, as follows:

[T]he revised procedure . . . focuses on two aspects [of whether a claim is “directed to” a judicial exception under the first step of the *Alice/Mayo* test (USPTO Step 2A)]: (1) [w]hether the claim recites a judicial exception; and (2) whether a recited judicial exception is integrated into a practical application. [W]hen a claim recites a judicial exception and fails to integrate the exception into a practical application, . . . further analysis pursuant to the second step of the *Alice/Mayo* test (USPTO Step 2B) . . . is needed . . . in accordance with existing USPTO guidance as modified in April 2018.[footnote omitted]

exceptions. Specifically, we agree with the Examiner’s corresponding identification of the following claim features: “receiving domain name and site map, validating the domain is free from malware[,] and certifying a document stating that domain is malware free.” Ans. 3. We also agree these features constitute judicial exceptions because they encompass “requesting and validating if the domain and URLs in the site map are devoid of malware” (Ans. 5), which could “simply be performed mentally” (Final 10). In other words, “[a] person can . . . make the decisions without the assistance of a computer.” *Id.*

We add that each of the un-emphasized claim features of reproduced claim 1 (*supra* 2) fall within the Guidance’s following categories of judicial exceptions:⁴ “(b) Certain methods of organizing human activity—

84 Fed. Reg. at 51 (referencing, via the omitted footnote, “USPTO Memorandum of April 19, 2018, ‘Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)’ (Apr. 19, 2018), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> [. . . ’USPTO *Berkheimer* Memorandum’].”).

⁴ The Examiner alleges judicial exceptions not recognized by the Guidance—namely exceptions of: “collecting information, analyzing it[,] and displaying certain results of the collection and analysis” (Ans. 3 (citing *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)); *see also* Final 10); “[a]n idea of itself” (Ans. 4 (citing *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089 (Fed. Cir. 2016), *Intellectual Ventures v. Capital One Bank*, 792 F.3d 1363 (Fed. Cir. 2015), and *Electric Power Group*); “collecting and analyzing information to detect misuse” (*id.* at 5 (citing *FairWarning*)); “comparing new and stored information and using rules to identify option[s]” (Final 10 (citing *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F.App’x 950 (Fed. Cir. 2014) (unreported)). Pursuant to USPTO policy, we do not uphold these determinations. *See* Guidance 84 Fed. Reg. at 51 (“All USPTO personnel are, as a matter of

fundamental economic principles or practices” (Guidance, 84 Fed. Reg. at 52); and/or “(c) Mental processes—concepts performed in the human mind” (*id.*). We find so because each of the un-emphasized claim features constitutes a fundamental economic practice of verifying a business service and/or a related mental step (e.g., judgment). *See* “About the Bureau of Consumer Protection,” <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/about-bureau-consumer-protection> (describing practices of the U.S. Federal Trade Commission—Bureau of Consumer Protection). There is no material difference between the claim steps and pre-computer activities of: receiving an identification of a business (domain name) and its services (site map of included URLs); investigating whether the business and services are trustworthy; and informing the public that, per an investigation, the business and services are trustworthy.

For the foregoing reasons, we determine claim 1 recites judicial exceptions.

Step 2A, Prong Two: Are the Recited Judicial Exceptions Integrated Into a Practical Application?

Turning to the second issue set forth by the Guidance (*see supra* 5, bullet “(2)”), we agree with the Examiner that the judicial exceptions are not integrated into a practical application. *See* Guidance, 84 Fed. Reg. at 53 (describing a “practical application” as a “meaningful limit on the [recited

internal agency management, expected to follow the guidance.”). Nor do we, however, find these identifications of judicial exceptions are erred as a matter of law. *See id.* (“Rejections will continue to be based upon the substantive law[.]”). Instead, and because the Guidance was issued after submission of the appeal papers, we apply the Guidance to facilitate prosecution.

judicial exceptions], such that the claim is more than a drafting effort designed to monopolize the [exceptions]”). Specifically, we agree claim 1’s “additional limitations/elements are: request via network, [validate] with a processor[,] and publish[] a document [to a network-accessible location].” Final 4. We also agree “[t]he steps recited . . . [are not meaningfully tied to] computer technology because [species] of these steps can [be performed] outside of the computer technology currently claimed.” *Id.* at 11.

We add that the claims do not specify *how*: (i) the request is received “via a network,” e.g., whether the network is the internet, a telephone network, a social network, etc; (ii) the URLs are validated “with a processor,” e.g., whether someone uses a computer to send an email asking for validation, a webcrawler checks the URLs, etc.; (iii) the document is published “to a network-accessible location,” e.g., what type of network or location is implemented, the manner of access, etc. *See Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, (Fed. Cir. 2018) (explaining the need to recite “how” results are achieved); *see e.g., id.* at 1346 (“In sum, [the claims] consist of generic and conventional information acquisition and organization steps that . . . do not convert[] the abstract idea . . . into a particular conception of how to carry out that concept.”). The claimed technology is thus not a “meaningful restriction of scope,” such as a particular technological solution to a problem, particular machine, or particular transformation of an article to a different state. Guidance, 84 Fed. Reg. at 55 (“exemplary considerations . . . indicative [of] a practical application”).

For the foregoing reasons (of the last two sections), we determine claim 1 is directed to the recited judicial exceptions—not to a practical application thereof.

*Step 2B: Does the Claim Recite Anything That Is
Beyond the Recited Judicial Exceptions and Not a Well-Understood,
Routine, Conventional Activity?*

Turning to the third and fourth issues set forth by the Guidance (*see supra* 6, bullets “(3)” and “(4)”), we agree with the Examiner that the claimed invention does not comprise a feature that is neither a judicial exception nor “well-understood, routine, conventional.” 84 Fed. Reg. at 56. Specifically, we agree “[t]he machines claimed to implement the abstract idea are merely generic computer components.” Final 10. We also agree “[t]here is nothing present in the claims to indicate that these computing elements differ from any standard computer setup.” *Id.* We further agree the claimed “[r]eceiving a request via a network, validating with a processor, [and] publishing a document to a network accessible location are routine and conventional activities performed by generic devices.” *Id.* at 5.

We add that, as discussed for Step 2A, prong two, claim 1 does not specify the involvement of the claimed computer technology in receiving the identification of a domain name and site map (“via a network”), in validating the domain name and site map’s URLs (“with a processor”), and publishing the certifying document (“to a network-accessible location”). *Supra* 9. Claim 1 thus recites the computer components as performing only generic functions (i.e., what these components ubiquitously do as a class) and as doing so to merely apply the recited judicial exceptions. *See* Guidance, 84 Fed. Reg. at 55 (“apply it” bullet corresponding to the Guidance’s footnote 30); *see also* Spec. ¶¶ 39–40 (describes the invention’s example system architecture and computing as achieved via nondescript, off-the-shelf components in no particular configuration). That is, the claimed technology constitutes “mere instructions to apply a judicial exception.” *Id.* at n. 30; *see*

also MPEP § 2106.05(f) (cited by the Guidance’s footnote 30 as instructive for this issue).

For the foregoing reasons (of the last three sections), we determine the claimed technology does nothing more than append generic computer components that merely apply the recited judicial exceptions.

Appellant’s Arguments

Appellant contends the Examiner overgeneralizes the claimed invention in addressing its patent-eligibility. Br. 8–9. Specifically, Appellant contends: “[T]he Examiner stated [claim 1] recite[s] to collect, present, then compar[e] . . . the data with the stored data.’ . . . [C]laim 1 includes *none* of the terms ‘collect’, ‘present’, or ‘compare’.” Br. 8; *see also* Reply 2. Appellant also contends: “Claim 1 explicitly recites that the request is received ‘via a network’, and that the validation is performed ‘with a processor’. As a result, claim 1 cannot be ‘performed mentally or with a pen and paper’, as alleged by the Examiner.” Br. 10. Appellant further contends: “The problem of internet-based malware could not occur outside of a computer-based environment, and therefore requires a computer-based solution, as recited in the claims.” *Id.* We are unpersuaded for each of three reasons.

First, the contentions are not meaningful arguments—failing to even cite the Examiner’s alleged findings.

Second, our above application of the Guidance indicates no error in the Examiner’s finding that claim 1 is directed to judicial exceptions.

Third, claim 1 lacks a technical solution, e.g., to the asserted “problem of internet-based malware” (Br. 10). Indeed, because the additional elements are so broadly recited, the claimed technology can be read on even

the steps of: (i) receiving a request by telephone (“via a network”) to validate a domain name and site map as trustworthy; (ii) using a computer in any manner (“with a processor”) to determine the domain name and site map are trustworthy, e.g., using email to instruct another party to certify the domain name and site map; and (iii) documenting the certification to any location accessible by a network of individuals (“to a network-accessible location”).

The importance of specifying a technical solution is explained by *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1311 (Fed. Circ. 2016). Namely, *McRO* explains that a claim reciting a judicial exception is nonetheless patent-eligible if reciting *a mechanism that prevents preemption* of the exception. *Id.* at 1314. *McRO* states:

The preemption concern arises when the claims are not directed to a specific invention and instead improperly monopolize the basic tools of scientific and technological work. . . . A patent is not good for an effect, or the result of a certain process because such patents would prohibit all other persons from making the same thing by any means whatsoever. A patent may issue for the means or method of producing a certain result, or effect, and not for the result or effect produced. We therefore look to whether the claims in these patents focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.

Id. (citations and quotation marks omitted). Appellant’s argued claim features do not overcome these concerns.

For the foregoing reasons, we sustain the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101.

REJECTION UNDER 35 U.S.C. § 103

Claim 1 is representative of claims 2–20 for this rejection.⁵ *See* 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

Sitemap of Multiple URLs

Appellant contends Hughes does not teach or suggest the claimed validating of multiple URLs within a site map for a domain name. *See* Reply 3; Br. 11–13. We are unpersuaded.

The Examiner reads the claimed validating on Hughes’ hyperlink certification. Final 12–13. In doing so, the Examiner reads the claimed domain name on the displayed hyperlink text (“yourfriendlybank.com”). *Id.* The Examiner reads the claimed sitemap and included URLs respectively on the hyperlink’s identified website (also “yourfriendlybank.com”) and its included URLs (webpages)—explaining that the website comprises a homepage and therein-nested filepath webpages. Ans. 6–7, 9. And, the Examiner finds it would have been obvious to verify a hyperlink to a website by, in part, verifying the included URLs (i.e., verifying the webpages). *Id.* at 9.

Appellant does not persuade us that certifying a hyperlink to a website would not predictably include certifying the included URLs. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (“After a *prima facie* case

⁵ Despite providing separate comments for independent claims 17 and 19 (Br. 14–16), the Appeal Brief argues all claims under the same headings (*id.* at 11–17) and does not present separate bases of patentability for claims 17 and 19. *See also e.g., id.* at 14 (contending claim 17 is patentable “[f]or reasons similar to those presented for claim 1”), 15 (contending claim 19 is patentable “[f]or reasons similar to those presented for claim 1”).

. . . has been established, the burden of . . . [r]ebuttal is . . . a showing of facts supporting the opposite conclusion.” (internal quotation marks and citation omitted); SHOW, Black’s Law Dictionary (10th ed. 2014) (“To make (facts, etc.) apparent or clear by evidence”). In the Reply Brief, Appellant summarily contends a hyperlink does not contain a sitemap or multiple URLs. Reply 3. In the Appeal Brief, Appellant summarily contends Hughes bears “no mention . . . of facts pertaining to *more than one* hyperlink . . . [or URLs] in a site map.”⁶ Br. 13. Even if correct, these contentions do not address whether a website would be reasonably understood as a sitemap of URLs and/or whether it would have been *obvious* to verify a hyperlink to a website by verifying the corresponding URLs (i.e., by verifying the webpages).

Malware

Appellant contends Hughes does not teach or suggest the claimed validating of URLs as “devoid of malware.” See Reply 3. We are unpersuaded.

The Examiner reads this limitation on Hughes’ hyperlink certification and, more particularly, on its assurance that the displayed hyperlink text (“yourfriendlybank.com”) is the hyperlink’s actual and only destination (e.g., not “evilbank.com” or a redirect). Ans. 7–8; Final 6; *see also* Ans. 11 (finding Bokarius’ invention provides “security against . . . redirect[ing] the user to a malicious website”).

⁶ Hughes expressly contemplates a certification of multiple hyperlinks. Hughes ¶ 63 (“Although the above description describes determining if a single hyperlink is certified, the plug in may determine if a number of hyperlinks are certified.”).

Appellant does not persuade us that this certification assures a hyperlink is devoid of malware. In the Reply Brief, Appellant summarily contends “Hughes has nothing to do with” URLs and malware.⁷ Reply 3. In the Appeal Brief, Appellant does not address the “devoid of malware” limitation. *See* Br. 11–16 (highlighting argued claim limitations; not highlighting “malware”). The briefs thus lack any showing of fact, or even reasoning, against the Examiner’s finding.

Ownership

Appellant contends Hughes does not teach or suggest the claimed validating of the domain name as owned by an entity fulfilling a trust criterion. Br. 13. We are unpersuaded.

The Examiner reads this limitation on Hughes’ hyperlink certification and, more particularly, on its assurance that the hyperlink destination is owned by the entity identified within the displayed hyperlink text (“yourfriendlybank.com”). Ans. 9–10; Final 8, 13.

Appellant does not persuade us this certification “in the facts claimed by declarant” (*id.* at 8) does not assure ownership of the hyperlink destination by the identified entity. In the Appeal Brief, Appellant summarily contends “Hughes is silent regarding an entity fulfilling a trust criterion.”⁸ Br. 13. In the Reply Brief, Appellant does not address the Examiner’s response to Appellant’s argument. Thus, Appellants do not persuasively rebut the basis of the rejection.

⁷ Hughes expressly teaches the invention as guarding against “drive-by malware.” Hughes ¶ 10.

⁸ Hughes expressly teaches that the “certifier does diligence to confirm the identity of the declarant.” Hughes ¶ 41.

Combination of Hughes and Bokarius

Appellant contends Hughes does not teach claim limitations which are mapped to Bokarius (Br. 13–15), and vice-versa (*id.* at 15–16). *Compare* Final 12–13 (discussing the claimed requesting and validating with respect to Hughes), 14 (discussing the claimed publishing with respect to Bokarius). Because Appellant does not address the substance of the rejection, we are unpersuaded of error.

For the foregoing reasons, we sustain the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 103.

CONCLUSION

Claim(s) Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	
1–20	103	Hughes and Bokarius	1–20	
Overall Outcome			1–20	

DECISION

We affirm the rejections of claims 1–20.

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).

AFFIRMED