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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEBORAH KIMBERG,
SHAWN ERIC HAGMEIER, and DEREK RYAN REED¹

Appeal 2018-008942
Application 14/479,610
Technology Center 3600

Before BRADLEY W. BAUMEISTER, ADAM J. PYONIN, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–24, which constitute all of the pending claims. App. Br. 2. These claims stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Action mailed October 20, 2017 (“Final Act.”) 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. Appellant identifies MasterCard International Incorporated as the real party in interest. Appeal Brief filed March 22, 2018 (“App. Br.”) 1.

CLAIMED SUBJECT MATTER

Appellant describes the present invention as follows:

A computer-implemented method for processing a real-time money transfer with a screening payment network having a screening module communicatively coupled to a server computing device is provided. The method includes receiving a request to transfer funds from a payor account associated with an originating institution to a payee account associated with a receiving institution. The request includes money transfer data indicative of a payor's identifying information. The method also includes determining a sanction score based at least in part on the money transfer data, the sanction score indicative of the likelihood that the payor is on at least one sanctioned entity list. The method also includes transmitting the money transfer data and the sanction score to the receiving institution, and transmitting a response message to the originating institution, the response message indicating whether the receiving institution authorizes or denies the request to transfer the funds.

Abstract.

Independent claim 1 is representative of the appealed claims.² It is reproduced below with formatting modified for clarity and emphasis added to the claim language that recites an abstract idea:

1. A computer-implemented method for real-time processing a money transfer with a payment network having a screening module communicatively coupled to a server computing device, wherein the server computing device includes a memory device and a processor, said method comprising:

² Appellant generally argues all of the claims together as a group. App. Br. 8–12. But Appellant does present additional arguments for claims 6, 15, and 22. *Id.* at 12–13. Accordingly, we select independent claim 1 as representative of claims 1–5, 7,–14, 16–21, 23, and 24. *See* 37 C.F.R. § 41.37(c)(1)(iv). We then separately address the additional arguments raised for claims 6, 15, and 22.

- [i] *storing, by the screening module, one or more sanctioned entity lists including information identifying each sanctioned entity included on each of the one or more sanctioned entity lists, wherein the one or more sanctioned entity lists are transmitted by a third party computing device in communication with the payment network;*
- [ii] *generating, by the screening module, an intermediate sanction score for each of the one or more sanctioned entity lists;*
- [iii] *assigning, by the screening module, the intermediate sanction score to each of the one or more sanctioned entity lists;*
- [iv] *receiving, by the screening module, from an originating institution computing device, a single request message requesting both (i) a transfer of funds and (ii) a sanction score determination, the transfer of funds being a transfer of funds from a payor account associated with an originating institution to a payee account associated with a receiving institution, the single request message including money transfer data indicative of at least one of a payer's identifying information, a payment amount, and a payee account identifier;*
- [v] *comparing, by the screening module, the payor's identifying information included in the single request message to the identifying information of each sanctioned entity on the one or more sanctioned entity lists;*
- [vi] *determining, by the screening module, a sanction score based at least in part on the intermediate sanction score assigned to the one or more sanctioned entity lists and the money transfer data, the sanction score indicative of the likelihood that the payor is on the one or more sanctioned entity lists;*
- [vii] *directly transmitting, by the screening module, the money transfer data included in the single request message and the sanction score determined by the screening module in a single money transfer message to the receiving institution; and*
- [viii] *transmitting, by the screening module, a response message to the originating institution, the response message indicating whether the receiving institution authorizes or denies the request to transfer the funds.*

PRINCIPLES OF LAW

A. SECTION 101

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

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-step framework, described in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 75–77). 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, 67 (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 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); 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 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 187; *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 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 (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.* (alterations in original) (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.*

B. USPTO SECTION 101 GUIDANCE

In January 2019, the United States Patent and Trademark Office (“USPTO”) published revised guidance on the application of 35 U.S.C. § 101. USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Guidance”). Under the 2019 Guidance, we first look to whether the claim recites the following:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)).

2019 Guidance, 84 Fed. Reg. 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” 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.

2019 Guidance, 84 Fed. Reg. 56.

ANALYSIS

Step 2A, Prong 1

Under step 2A, prong 1, of the 2019 Guidance, we first look to whether the claim recites any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes). 84 Fed. Reg. 52–55.

Claim 1’s limitation [i] recites “storing . . . one or more sanctioned entity lists including information identifying each sanctioned entity included on each of the one or more sanctioned entity lists, wherein the one or more sanctioned entity lists are transmitted by a third party computing device in communication with the payment network.” Such storing of lists of information reasonably can be characterized as reciting the pre-Internet activity of recordkeeping. As such, limitation [i] reasonably can be characterized as reciting a mental processes that can be performed in the human mind or with the aid of pencil and paper. More specifically, the step of limitation [i] reasonably can be characterized as reciting the mental process of observation. The 2019 Guidance expressly recognizes mental observations as patent-ineligible abstract ideas. 84 Fed. Reg. 52.

Moreover, this determination is not affected by the fact that limitation [i] includes the clause “wherein the one or more sanctioned entity lists are transmitted by a third party computing device in communication with the payment network.” This wherein clause does not constitute a recitation of an affirmative step of transmitting data. Rather, this wherein clause merely describes the source from where the list originated. This clause does not limit the substance or meaning of the data contained in the

list. As such, this clause merely describes an intangible property of the data that does not affect our characterization of the limitation as a mental step.

Limitation [ii] recites “generating . . . an intermediate sanction score for each of the one or more sanctioned entity lists.” Limitation [iii] recites “assigning . . . the intermediate sanction score to each of the one or more sanctioned entity lists.” Such generating and assigning of a score reasonably can be characterized as reciting either a mathematical calculation or a mental process, such as a mental evaluation or judgment. The 2019 Guidance expressly recognizes mathematical concepts including mathematical calculations, as well as mental evaluations and judgments, as constituting patent-ineligible abstract ideas. 84 Fed. Reg. 52.

Limitations [v] and [vi] read as follows:

[v] comparing . . . the payor’s identifying information included in the single request message to the identifying information of each sanctioned entity on the one or more sanctioned entity lists;
[and]

[vi] determining . . . a sanction score based at least in part on the intermediate sanction score assigned to the one or more sanctioned entity lists and the money transfer data, the sanction score indicative of the likelihood that the payor is on the one or more sanctioned entity lists.

Both of these limitations reasonably can be characterized as reciting processes that can be performed in the human mind, such as mental evaluations or judgments. As noted above, the 2019 Guidance expressly recognizes mental evaluations and judgments as constituting patent-ineligible abstract ideas.

Limitation [viii] recites “transmitting . . . a response message to the originating institution, the response message indicating whether the receiving institution authorizes or denies the request to transfer the funds.”

Such transmitting of an indication of whether a request is authorized reasonably can be characterized as reciting an opinion, which can be formulated in the mind or performed with the aid of paper and pencil. The 2019 Guidance expressly recognizes such mental processes as constituting patent-ineligible abstract ideas.

For these reasons, each of limitations [i]–[iii], [v], [vi], and [viii] reasonably can be characterized as reciting patent-ineligible subject matter.

Step 2A, Prong 2

Under step 2A, prong 2, of the 2019 Guidance, we next analyze whether claim 1 recites additional elements that integrate the judicial exception into a practical application. 84 Fed. Reg. 52–55.

As explained in the prong-1 analysis above, limitation [i] reasonably can be characterized as reciting a patent-ineligible mental process of storing lists of information. Limitation [i] additionally can be characterized as merely being directed to the insignificant extra-solution activity of storing data. It was well understood that received computer data typically must be stored—either in long-term storage or in a short-term cache or buffer so that the data can be processed as intended. By determining that gathering, transmitting, and displaying data constitutes insignificant extra-solution activity, the courts implicitly have determined that storing data, per se, also constitutes insignificant extra-solution activity.

Limitation [iv] reads as follows:

receiving, by the screening module, from an originating institution computing device, a single request message requesting both (i) a transfer of funds and (ii) a sanction score determination, the transfer of funds being a transfer of funds from a payor account associated with an originating institution to a payee account associated with a receiving institution, the single

request message including money transfer data indicative of at least one of a payer's identifying information, a payment amount, and a payee account identifier.

This limitation does not add any meaningful limitations to the recited abstract ideas because this limitation reasonably may be characterized as merely being directed to insignificant pre-solution activity:

An example of pre-solution activity is a step of gathering data for use in a claimed process, *e.g.*, a step of obtaining information about credit card transactions, which is recited as part of a claimed process of analyzing and manipulating the gathered information by a series of steps in order to detect whether the transactions were fraudulent.

MPEP § 2106.05(g).

Limitation [vii] recites “directly transmitting, by the screening module, the money transfer data included in the single request message and the sanction score determined by the screening module in a single money transfer message to the receiving institution.” This limitation does not add any meaningful limitations to the recited abstract ideas because this limitation reasonably may be characterized as merely being directed to the insignificant post-solution activity of transmitting data. *E.g.*, *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241–42 (Fed. Cir. 2016) (holding that printing or downloading generated menus constituted insignificant extra-solution activity).

Limitation [viii] also recites a step of transmitting data: “transmitting, by the screening module, a response message to the originating institution, the response message indicating whether the receiving institution authorizes or denies the request to transfer the funds.” As such, limitation [viii] not only can be interpreted reasonably as reciting an abstract idea, as explained in the preceding section of this Analysis, but also reasonably can be

interpreted as being directed to the insignificant post-solution activity of transmitting data. As such, limitation [viii] does not add any meaningful limitations to the recited abstract ideas.

Appellant argues that the claims are not directed to an abstract idea because they focus on a specific means or method that improves the relevant technology. App. Br. 9 (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016)). According to Appellant,

An inventive system that resolves the problem of delays in screening money transfers for participation by sanctioned entities and processing the screened money transfers is not a mere matter of “processing a money transfer” as asserted in the Office Action. Rather, independent Claims 1, 11, and 18 clearly “focus on a specific means or method that improves the relevant technology” by **receiving a single request message from an originating institution that requests both (i) a transfer of funds and (ii) a sanction score determination, and transmitting a single transfer message to the receiving institution that includes both the money transfer data and the determined sanction score.** In other words, Claim 1 recites *not* the result or effect of *any* screened money transfer transaction, but rather a detailed set of rules for accomplishing both screening and processing a money transfer using **a single** request message.

App. Br. 10.

Appellant restates this argument in the Reply Brief:

the present claims are directed to improving conventional industry practice in the field of screening electronic money transfers, by addressing the specific problem of time delays caused by the screening of each transfer. The recitation of a single request message that enables money transfers to be processed and screened in real-time results in increasing the speed of traditional money transfers while providing the capability to screen each money transfer.

Reply Br. filed Sept. 13, 2018 (“Reply Br.”) 2.

This argument is unpersuasive. As discussed above, the disputed limitations are recitations of a judicial exception; therefore these limitations are not additional elements that can confer patent eligibility to the claims. Memorandum, 84 Fed. Reg. at 54–55 (Prong Two requires “[i]dentifying whether there are any additional elements recited in the claim beyond the judicial exception(s)”). Additionally, the fact that Appellant’s claims may recite very specific approaches for optimizing the request protocol does not mean the claims recite improvements to the functioning of a computer or to any other technology or technical field. *See, e.g., Flook*, 437 U.S. at 593 (“respondent incorrectly assumes that if a process application implements a principle in some specific fashion, it automatically falls within the patentable subject matter of § 101.”).

In the present case, the act of bundling two requests into a single message does not constitute an improvement computer technology. Rather, it merely constitutes an improvement to the underlying communication protocol—an improvement to the underlying abstract idea of managing interactions between people. *See BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a new abstract idea is still an abstract idea”); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) (“What is needed is an inventive concept in the non-abstract application realm”).

For these reasons, Appellant does not persuade us that claim 1 is directed to an improvement in the function of a computer or to any other technology or technical field. MPEP § 2106.05(a). Nor is claim 1 directed to a particular machine or transformation. MPEP § 2106.05(b), (c). Nor has Appellant persuasively demonstrated that claim 1 adds any other meaningful limitations. MPEP § 2106.05(e). Accordingly, Appellant does not persuade us that claim 1 integrates the recited abstract ideas into a practical application within the meaning of the 2019 Guidance. 84 Fed. Reg. 52–55.

Step 2B

Under step 2B of the 2019 Guidance, we next analyze whether claim 1 adds any specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. 84 Fed. Reg. 56; MPEP § 2106.05(d). We determine that claim 1 does not.

The only hardware or additional elements beyond the abstract idea of claim 1 are the generically recited “payment network,” “screening module,” “server computing device,” “memory device,” and “processor.” Appellant do not point to sufficient evidence that any of these components are anything other than well-understood, routine, and conventional, hardware components or systems being used in their ordinary manner. App. Br. 8–13; Reply Br. 1–4.

Furthermore, Appellant’s Specification supports the determination that these components are well-understood, routine, and conventional:

Client systems 114 are interconnected to the Internet through many interfaces including a network, such as a local area network (LAN) or a wide area network (WAN), dial-in-connections, cable modems, and special high-speed ISDN lines. *Client systems 114 could be any device capable of interconnecting to the Internet including a web-based phone,*

personal digital assistant (PDA), or other web-based connectable equipment.

Spec. ¶ 40 (emphasis added).

Network 100 also includes point-of-sale (POS) terminals 115, which are connected to client systems 114 and may be connected to server system 112. . . . *POS terminals 115 could be any device capable of interconnecting to the Internet and including an input device capable of reading information from a cardholder's financial transaction card.*

Spec. ¶ 41 (emphasis added).

“In at least some embodiments, screening module 121 is integral with server system 112. In other embodiments, screening module 121 is a stand-alone module separate from server system 112.” Spec. ¶ 43.

Server system 112 is configured to be communicatively coupled to various individuals, including employees 144 and to third parties, e.g., account holders, customers, auditors, etc., 146 using an ISP Internet connection 148. *The communication in the exemplary embodiment is illustrated as being performed using the Internet, however, any other wide area network (WAN) type communication can be utilized in other embodiments, i.e., the systems and processes are not limited to being practiced using the Internet. In addition, and rather than WAN 150, local area network 136 could be used in place of WAN 150.*

Spec. ¶ 48 (emphasis added).

User computing device 202 includes a processor 205 for executing instructions. In some embodiments, executable instructions are stored in a memory area 210. Processor 205 may include one or more processing units (e.g., in a multi-core configuration). *Memory 210 is any device allowing information such as executable instructions and/or other data to be stored and retrieved. Memory 210 may include one or more computer readable media.*

Spec. ¶ 52 (emphasis added).

Other examples are contained in the Specification that provide evidence that the claimed hardware can entail conventional components used in their ordinary manner. *See* Spec. ¶ 60 (discussing conventional storage devices), ¶61 (discussing conventional storage interfaces), ¶ 62 (discussing conventional memory), ¶ 73 (discussing conventional processors), and ¶ 74 (discussing conventional hardware and software more generally).

Appellant argues in relation to the step-2B inquiry, as follows:

the prior art treated screening as a separate process that required a delay in processing the money transfer. The ordered combination recited in Applicant’s independent Claims 1, 11, and 18 moves the screening process to a new location as compared to the prior art, namely the same server that processes the money transfer transaction, which provides an advantage over the prior art by receiving a single request message from an originating institution that requests both (i) a transfer of funds and (ii) a sanction score determination, and transmitting a single transfer message to the receiving institution that includes both the money transfer data and the determined sanction score, *giving the benefit of screening and transferring funds in real-time*. Notably, the unconventional nature of the ordered combination in Applicant’s claims is evidenced by the acknowledged allowability of the claims over the prior art. Thus, the ordered combination of steps in independent Claims 1, 11, and 18 constitutes “significantly more” than the alleged abstract idea.

App. Br. 11–12.

As a threshold matter, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981). A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent ineligible. *See Mayo*, 566 U.S. at 90.

And we have already addressed the other aspect of Appellant’s argument in section 2A, prong 1, of the Analysis. Specifically, we explained that an improvement to an abstract idea cannot be a basis for determining that the claim recites significantly more than an abstract idea. Furthermore, relying on a “processor” to “perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

For these reasons, we determine that claim 1 does not recite additional elements that amount to significantly more than the judicial exception within the meaning of the 2019 Guidance. 84 Fed. Reg. 52–55; MPEP § 2106.05(d).

Preemption

Appellant additionally argues that the claims do not preempt other methods of screening and processing a money transfer. App. Br. 12. Appellant also argues that the additional limitations set forth in dependent claims 6, 15, and 22 further narrow the claims against any threat of preemption. *Id.* at 12–13.

These arguments are unpersuasive. We recognize that the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice*, 573 U.S. at 216. However, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. As our reviewing court has explained: “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in

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and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 216). Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Conclusions

Accordingly, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. We, likewise, sustain the 101 rejection of claims 2–24. Appellant’s separate arguments for claims 6, 15, and 22 are not persuasive for the reasons set forth above. And Appellant does not argue any of the remaining claims separately. App. Br. 29.

DECISION

The Examiner’s decision rejecting claims 1–24 is affirmed.

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED