UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/360,940	01/30/2012	Max YANKELEVICH	083862.0101	5897

161098   7590   10/08/2019

Baker Botts L.L.P.
1001 Page Mill Road
Building One, Suite 200
Palo Alto, CA 94304-1007

EXAMINER
KONERU, SUJAY

ART UNIT	PAPER NUMBER
3624	

NOTIFICATION DATE	DELIVERY MODE
10/08/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Cal-PTOMail@bakerbotts.com
hogene.choi@bakerbotts.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte MAX YANKELEVICH and ANDRII VOLKOV[1]

_____

Appeal 2018-009082
Application 13/360,940
Technology Center 3600

_____

Before DONALD E. ADAMS, ERIC B. GRIMES, and DAVID COTTA,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) involving claims related to managing crowdsourcing, which have been rejected as directed to patent-ineligible subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

_____

[1] Appellant identifies the Real Party in Interest as Crowd Computing Systems, Inc. Appeal Br. 3. We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42(a).

STATEMENT OF THE CASE

Claims 1–14, 16, and 21–53 are on appeal. Claim 1 is representative and reads as follows:

1.   A method comprising:

receiving, by a processor of an information processing system and from a computing device corresponding to at least one customer associated with a task, an information set associated with the task, wherein the information set comprises at least:

a description of the task;

a reward to be provided for completion of the task; and

at least one adjudication rule for accepting a task result received from at least one worker system participating in the task;

transmitting, from the information processing system, a first notification regarding the task and availability of the reward for transmission, by a network, to a set of one or more worker systems;

until the at least one adjudication rule is satisfied, performing:

receiving, by the information processing system and by the network, at least one task result associated with the task from at least one of the worker systems in the set; and

comparing, by the processor of the information processing system, the task result against the adjudication rule to determine whether the task result conforms to an acceptable degree of accuracy, and if the adjudication rule is not satisfied then:

increasing a size of the set of the one or [sic] worker systems and

transmitting, by the network, a second notification regarding the task and availability of the reward to the increased set of worker systems; and

displaying task result information based on the task result received from the at least one worker system participating in the task.

DISCUSSION

The Examiner has rejected claims 1–14, 16, and 21–53 under 35 U.S.C. § 101 on the basis that they are directed to an abstract idea "because the claims are strongly related to organizing human activities because the tasks are done by users and thus are equivalent to human activities and this type of crowdsourcing is a type of management or organization to complete those tasks." Final Action[2] 4. The Examiner reasons that the instant claims are similar to those found patent-ineligible in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014). *Id.*

> The Examiner also finds that
>
> [t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements individually or in combination . . . do not recite anything that is beyond conventional and routine use of computers and the additional limitations are for mere data gathering, data transformation and extra solution activity.

Id. at 4–5.

Appellant argues that "[w]ithout any explanation to support the conclusion, the Examiner has failed to present a *prima facie* case of unpatentability. . . . The Appellant respectfully submits that the Examiner failed to clarify and identify the abstract idea as it is recited in the claim." Appeal Br. 6. Appellant also argues that the claimed method "overcomes a problem specifically created by networked computers without task management or oversight" and is rooted in computer technology to overcome a problem specifically arising in the realm of computers. *Id*. at 7.

---

[2] Final Action mailed June 19, 2017.

We agree with the Examiner that the Appellant's claims are not eligible for patenting. 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 concluded that "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable under 35 U.S.C. § 101. *See, e.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

To determine if a claim falls into an excluded category, we apply a 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)). We first determine what 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.").

Patent-ineligible abstract ideas 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)). In contrast, patent-eligible inventions include physical and chemical processes, such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 192 (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 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claimed method employed 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 192 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). The Supreme Court noted, however, 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, and "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 (quotation marks 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 (alterations in original)). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

The PTO recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed.

Reg. 50 (January 7, 2019) ("Revised Guidance"). Under that guidance, we first determine whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts; certain methods of organizing human activity 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)).

See 84 Fed. Reg. at 54–55. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then determine whether the claim:

> (3) adds a specific limitation beyond the judicial exception that is not a "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 84 Fed. Reg. at 56.

Revised Guidance Step 2(A), Prong 1

Following the Revised Guidance, we first consider whether the claims recite a judicial exception. Claim 1 recites a method of receiving task information (description, reward, acceptance criteria); transmitting the task and reward to a set of workers; receiving results; comparing the results to the acceptance criteria; iteratively increasing the size of the set of workers

notified of the task, until acceptable results are received; then displaying the acceptable result.

We agree with the Examiner that the concept recited in claim 1 is similar to the methods of organizing human activities— specifically, commercial or legal interactions—that have been found to be abstract ideas by the courts. Final Action 4 (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014)). Claim 1 in *buySAFE* was directed to

> a method in which (1) a computer operated by the provider of a safe transaction service receives a request for a performance guarantee for an "online commercial transaction"; (2) the computer processes the request by underwriting the requesting party in order to provide the transaction guarantee service; and (3) the computer offers, via a "computer network," a transaction guaranty that binds to the transaction upon the closing of the transaction.

buySAFE, 765 F.3d at 1351.

The court concluded that, as to the question of what subject matter falls within the "abstract ideas" category, "[t]he relevant Supreme Court cases are those which find an abstract idea in certain arrangements involving contractual relations, which are intangible entities." *Id*. at 1353 (citing *Bilski v. Kappos*, 561 U.S. 593 (2010) and *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014)). The *buySAFE* court held that the claims at issue were "squarely about creating a contractual relationship—a 'transaction performance guaranty'—that is beyond question of ancient lineage. . . . The claims thus are directed to an abstract idea." *Id*. at 1355.

Like claim 1 in *buySAFE*, claim 1 on appeal recites a contractual or business relationship; specifically, providing a group of workers with a description of a task and corresponding reward; accepting responses and

determining whether they meet certain criteria; and iteratively increasing the number of workers notified of the task and reward until a satisfactory response is received.

The Specification makes clear that crowdsourcing was an established practice prior to Appellant's invention: "Crowdsourcing has recently gained increased popularity within various industries. Crowdsourcing refers to the act of delegating (sourcing) tasks by an entity (crowdsourcer) to a group of people or community (crowd) through an open call." Spec. ¶ 2. The Specification also confirms that crowdsourcing is a business or contractual relationship: "Individuals (workers) within the crowd are usually rewarded for completing a task." *Id*.

Thus, we agree with the Examiner that claim 1 recites an abstract idea because the recited crowdsourcing process is among the "methods of organizing human activity"—specifically, commercial interactions such as contracts and business relations—that have been recognized as abstract ideas. *See* 84 Fed. Reg. at 52.

Revised Guidance Step 2(A), Prong 2

Although claim 1 recites an abstract idea, it would still be patent-eligible if "the claim as a whole integrates the recited judicial exception into a practical application of the exception"; i.e., if the claim "appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception." 84 Fed. Reg. at 54. This analysis includes "[i]dentifying whether there are any additional elements recited in the claim beyond the judicial exception(s)" and "evaluating those additional elements individually and in combination to determine whether they integrate the

exception into a practical application." *Id.* at 54–55. One of the "examples in which a judicial exception has not been integrated into a practical application" is when "[a]n additional element . . . merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea." *Id*. at 55.

Here, claim 1 recites two elements beyond the abstract idea of crowdsourcing: (1) iteratively expanding the crowd of workers notified of a task and reward until the task is satisfactorily completed, and (2) using a computer network to perform the process.

Regarding the first element, each step of notifying a (progressively larger) group of workers of a task and reward, and analyzing responses according to a set of criteria, is an exercise of crowdsourcing; i.e., the abstract idea recited in claim 1. Thus, the claim as a whole does not amount to a practical implementation of the recited abstract idea. Rather, it amounts to repeating the same abstract idea.

Regarding the second element, we agree with the Examiner that claim 1 "do[es] not recite anything that is beyond conventional and routine use of computers." Final Action 5. Claim 1 itself requires only a generic "processor," "information processing system," "computing device," and "network" to carry out the recited functions; it does not recite any specific hardware or software configuration.

Consistent with claim 1, the Specification does not describe the claimed method as requiring any unconventional computer functionality. For example, the Specification states that the recited network "can include wide area networks, local area networks, wireless networks, and/or the like."

9

Spec. ¶ 28. Likewise, the recited information processing system "can be a personal computer system, a server computer system, a thin client, a thick client, a hand-held or laptop device, a tablet computing device," etc. *Id*. ¶ 78. The information processing system can include "one or more processors or processing units," which are not further described. *Id*. ¶ 79. The Specification also refers to "customer systems" and "worker systems" (*see, e.g.*, *id*. ¶ 28) but does not describe such computer systems as requiring anything other than conventional computer technology.

Thus, the claimed method does not use the recited abstract idea in conjunction with a particular machine or manufacture, but instead simply "includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea." 84 Fed. Reg. at 55. Because claim 1 recites an abstract idea and does not integrate the abstract idea into a practical application, it is directed to an abstract idea.

Revised Guidance Step 2(B)

Finally, the Revised Guidance directs us to consider whether claim 1 includes "additional elements . . . [that] provide[] 'significantly more' than the recited judicial exception." 84 Fed. Reg. at 56. The Revised Guidance states that an additional element that "simply appends well-understood, routine, conventional activities previously known in the industry, specified at a high level of generality, to the judicial exception, . . . is indicative that an inventive concept may not be present." *Id*.

Here, claim 1 is directed to the abstract idea of crowdsourcing a task, and recites certain computer functions to implement that idea. Claim 1 recites "receiving" an information set by a processor from a customer's

computing device; "transmitting" notifications from an information
processing system to worker systems; "receiving" results from the worker
systems; "comparing" results to an adjudication rule; and "displaying task
result information."

Receiving and transmitting information are routine and conventional
uses of a computer network. *See buySAFE*, 765 F.3d at 1355 ("That a
computer receives and sends the information over a network—with no
further specification— is not even arguably inventive."). And, like the
claimed method in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d
1350 (Fed. Cir. 2016), claim 1 does not require any "new techniques for
analyzing" information or "an arguably inventive device or technique for
displaying information." *Id*. at 1355.

Rather, claim 1 requires only routine and conventional computer
functions, recited at a high level of generality. And, as discussed above,
claim 1 does not recite, and the Specification does not describe, any
unconventional computer hardware or software as being necessary for the
claimed method.

Therefore, claim 1 requires using only a generic computer system, and
"the mere recitation of a generic computer cannot transform a patent-
ineligible abstract idea into a patent-eligible invention." *Alice*, 573 U.S. at
223. The combination of elements recited in the method of claim 1 does not
amount to significantly more than the judicial exception itself, and under 35
U.S.C. § 101 the claimed method is ineligible for patenting.

Appellant's Arguments

Appellant argues that, "[w]ithout any explanation to support the conclusion, the Examiner has failed to present a *prima facie* case of unpatentability." Appeal Br. 6.

This argument is unpersuasive.

> [T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in 'notify[ing] the applicant . . . [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.' 35 U.S.C. § 132.

In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alterations in original). Here, the Examiner explained the basis for concluding that the claims were directed to an abstract idea and did not include additional elements that amounted to significantly more than the judicial exception to patent eligibility. *See* Final Action 3–6. Thus, the Examiner adequately explained the prima facie case for finding the claims patent-ineligible.

Appellant also argues that the claims include a "non-conventional combination of claim features," as evidenced by the Examiner's withdrawal of rejections based on prior art. Appeal Br. 7. Similarly, Appellant argues that "Claim 1 includes a combination of elements that is applied to a new and useful end, which is patent eligible." *Id*.

These arguments are also unpersuasive. By statute, "[w]hoever invents or discovers any new and useful process . . . may obtain a patent therefor." 35 U.S.C. § 101. The Supreme Court, however, has "long held that this provision contains an important exception. '[L]aws of nature, natural phenomena, and abstract ideas' are not patentable." *Mayo*, 566 U.S.

at 70. Thus, the judicial exceptions to patentability apply even if the subject matter is new, and indeed even if it is both new and useful.

Appellant also argues that, like the invention in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), the invention here is rooted in computer technology, to overcome a problem specifically arising in the realm of computers. Appeal Br. 7. Appellant argues that the claimed invention "overcomes a problem specifically created by networked computers without task management or oversight." *Id.*

We do not agree that the facts of this case are similar to those of *DDR Holdings*. The problem addressed in that case was that "visitors would be taken to [a] third-party merchant's website when they clicked on the merchant's advertisement on the host site." 773 F.3d at 1248. The solution in *DDR Holdings* was "a composite web page that displays product information from the third-party merchant, but retains the host website's 'look and feel.'" *Id.* at 1248–49.

The *DDR Holdings* court concluded that the claims addressed "a problem specifically arising in the realm of computer networks," by ensuring that "upon the click of an advertisement for a third-party product displayed on a host's website, the visitor is no longer transported to the third party's website." *Id.* at 1257. The court considered the somewhat analogous concept of a "warehouse store that contains a kiosk for selling a third-party partner's cruise vacation packages." *Id.* at 1258. The court considered that pre-Internet analog to be inapplicable, however, because

> [t]here is . . . no possibility that by walking up to this kiosk, the
> customer will be suddenly and completely transported outside
> the warehouse store and relocated to a separate physical venue

> associated with the third-party —the analog of what ordinarily occurs in "cyberspace" after the simple click of a hyperlink.

Id.

Here, by contrast, the problem solved by the claims on appeal is not one that is unique to computer networks. The background discussion in Appellant's Specification states that "[c]onventional crowdsourcing systems generally require a large amount of *manual intervention* by the entity that is sourcing the tasks. For example, the entity is generally required to *manually* manage workers and their output, the rewarding of workers, etc. This *manual intervention* can be very time consuming and costly to the entity." Spec. ¶ 2 (emphasis added). In the claimed invention, by contrast,

> [t]he crowdsourcing server automatically generates a task from [the customer's] information and manages the data required by the task, worker selection, worker task results, and worker rewards. Therefore, *customers are no longer required to manually manage all of this information*. This increases quality via an iterative approach as embodiments of the present invention manage the process until a desired accuracy is achieved *within allowed budgetary constraints*.

Id. ¶ 73 (emphasis added).

Thus, Appellant's Specification describes the problem solved by the invention as being the time and cost required to manually manage a crowdsourcing system. This is not a problem arising in the realm of computer networks. We therefore agree with the Examiner that the "claims arise in the realm of crowdsourcing and task delegation, which are more business problems, and th[e] claims are not rooted in technology but mere[ly] use technology for implementation." Ans. 4.

We affirm the rejection of claim 1 under 35 U.S.C. § 101. Claims 2–14, 16, and 21–53 were not argued separately and therefore fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–14, 16, 21–53	101	Eligibility	1–14, 16, 21–53	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED