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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BENJAMIN SCOTT BODING, ANDREW NAUMANN ZU
KOENIGSBRUECK, and CORY H. SIDDENS

Appeal 2019-000141
Application 13/926,785
Technology Center 3600

Before JOSEPH L. DIXON, JAMES R. HUGHES, and
JASON J. CHUNG, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals the Final Rejection of claims 1, 3, 10, 11, 13, 20, 22, and 25.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention relates to improving the efficiency and quality of transaction review systems and methods. Spec. ¶ 2. Claim 1 is illustrative

¹ Claims 2, 4–9, 12, 14–19, 21, 23, 24, and 26 are cancelled. Appeal Br. 25–28.

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. According to Appellant, Visa International Service Association is the real party in interest. Appeal Br. 3.

of the invention and is reproduced below:

1. A system operationally provided between a merchant computer and a payment processing server, the system comprising:

a first computer comprising:

a first processor; and

a first memory coupled with and readable by the first processor, the first memory configured to store a first set of instructions which, when executed by the first processor, causes the first processor to:

receive, from a user device, transaction data for a transaction between the user device and the merchant computer of a merchant, the transaction data including account information of a user,

retrieve a fraud profile set up by the merchant from a first database storing fraud profiles set up by a plurality of merchants, wherein the fraud profile includes a first set of fraud rules pre-defined by the merchant,

determine a first transaction score for the transaction based on the first set of fraud rules of retrieved fraud profile,

determine that an outcome of the transaction is indeterminate based on the first transaction score,

store the transaction data in a review queue based on the indeterminate outcome of the transaction, wherein the transaction data is retrieved from the review queue after a predetermined time has elapsed since the transaction data is stored in the review queue and the transaction data has not been reviewed;

a second computer comprising:

a second processor; and

a second memory coupled with and readable by the second processor, the second memory configured to store a second set of instructions which, when executed by the second processor, causes the second processor to:

receive the transaction data retrieved from the review queue,

identify external data sources to query,

retrieve, prior to querying the external data sources, one or more access rules predetermined by the merchant from a second rules database, the one or more access rules specifying one or more of the external data sources to be queried based on characteristics of the transaction, wherein the one or more access rules are associated with at least one of: a cost of obtaining the supplemental data, speed of delivery of the supplemental data, or a quality of the supplemental data,

query the one or more of the external data sources for the supplemental data in an order identified by the one or more access rules,

retrieve a second set of fraud rules set up by the merchant, wherein the second set of fraud rules are different from the first set of fraud rules;

determine a second transaction score based on at least the transaction data, the supplemental data and the second set of fraud rules, wherein the second transaction score indicates whether the transaction is accepted or rejected,

if the transaction is rejected, transmit a notification to the merchant computer, and

if the transaction is accepted, generate an authorization request message and transmit the authorization request message to the payment processing server, wherein the first computer and the second computer are operationally provided between the merchant computer and the payment processing server, and

a data aggregator configured to aggregate the supplemental data from the external data sources, and normalize the supplemental data from the external data sources, wherein normalizing converts the supplemental data to a common format.

REJECTION

Claims 1, 3, 10, 11, 13, 20, 22, and 25 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 2–6.

ANALYSIS

I. Claims 1, 3, 10, 11, 13, 20, 22, and 25 Rejected Under 35 U.S.C. § 101
A. Legal Principles

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: “[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 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 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 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 187; *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.”). 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 (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).

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

The U.S. Patent and Trademark Office (“USPTO”) published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, 2019 Revised Patent Subject Matter Eligibility Guidance (“Memorandum”). Under that 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 activity 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)).

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 are 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.

See Memorandum.

B. The Examiner's Conclusions and Appellant's Arguments

The Examiner concludes the present claims recite certain methods of organizing human activity. Final Act. 3, 6; Ans. 3, 4, 6. The Examiner also determines the present claims do not amount to significantly more than an abstract idea itself because the abstract idea is implemented using additional elements that are well-understood, routine, and conventional. Final Act. 4–6; Ans. 5 (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014); *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015); *Bancorp Servs., LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012)).

Appellant contends the Examiner does not establish a prima facie case of subject matter ineligibility because the Examiner fails to identify clearly the abstract idea. Appeal Br. 10–12; Reply Br. 2–3. Appellant argues the present claims recite an improvement in computer-related technology because transaction data processing is performed faster and, therefore, fraudulent transactions are determined faster. Appeal Br. 13–16 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)); Reply Br. 4–5. Appellant further argues the present claims are necessarily rooted in technology to solve problems specifically arising in the realm of technology because in situations when a transaction decision process is taking too long, this problem is solved by modifying a computer system instead of hiring more human reviewers. Appeal Br. 12–13, 21–22 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). Additionally, Appellant argues the present claims provides an unconventional technical solution by utilizing a distributed system such as a first computer, a second

computer, and a data aggregator to reduce the extra steps and communications between the entities in the distributed systems that are inherent in conventional systems and cause unnecessary burden on the different parties involved that results in elements combined in an unconventional manner. Appeal Br. 20–21 (citing *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed Cir. 2016)). Appellant also contends that the Examiner does not identify all the additional elements such as a “second computer” and a “data aggregator.” Appeal Br. 16–18. Appellant further contends that the Examiner fails to provide clear and convincing evidence to support the finding that the additional elements implementing the abstract idea are well-understood, routine, and conventional. Appeal Br. 19–20 (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018)); Reply Br. 5–6. We disagree with Appellant.

C. Discussion

1. Step 2A, Prong 1

Patent eligibility under 35 U.S.C. § 101 is a question of law that is reviewable *de novo*. See *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). We, therefore, conclude the emphasized portions of claim 1, reproduced above (*see supra* at 2–3), recite commercial interactions including sales activities or business relations because claim 1³ requires transaction data processing, determining whether the transaction is

³ Claim 1, reproduced above with emphases, recites similar features as independent claim 11. Appellant does not argue claims 3, 10, 11, 13, 20, 22, and 25 separately, but asserts the § 101 rejection of those claims should be withdrawn for at least the same reasons as argued for independent claim 1. Appeal Br. 9–22. We, therefore, group claims 1, 3, 10, 11, 13, 20, 22, and 25 together and refer to those claims as the “present claims.”

fraudulent, and accepting or rejecting the transaction. According to the Memorandum, commercial interactions including sales activities or business relations fall into the category of certain methods of organizing human activity. *See* Memorandum. Moreover, those certain methods of organizing human activity are a type of an abstract idea. *See id.*; *see also Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (verifying payment information, as well as “financial transactions . . . and data collection related to such transactions” “are directed to an abstract idea under Alice step one.”); *buySAFE*, 765 F.3d at 1352–54 (Claims reciting sending and receiving communications over a computer network to facilitate online commercial transactions are directed to “contractual relations, which are intangible entities” and “constitute[] ‘a fundamental economic practice long prevalent in our system of commerce.’”).

We, therefore, agree with the Examiner’s conclusion that the present claims recite certain methods of organizing human activity. Final Act. 3, 6; Ans. 3, 4, 6. We, therefore, disagree with Appellant’s argument the Examiner does not establish a prima facie case of subject matter ineligibility because the Examiner fails to identify clearly the abstract idea. Appeal Br. 10–12.

Because the present claims recite commercial interactions including sales activities or business relations that fall into the category of certain methods of organizing human activity (i.e., an abstract idea), we proceed to prong 2.

2. *Step 2A, Prong 2*

The present claims do not integrate the abstract idea into a practical application because they do not impose any meaningful limits on practicing

the abstract idea. In particular, we disagree with Appellant’s argument that, similar to *Enfish*, the present claims recite an improvement in computer-related technology. Appeal Br. 7–10, 14–18; Reply Br. 9–12.

Appellant does not identify persuasively how the Specification sets forth an improvement in technology. The USPTO October 2019 Patent Eligibility Guidance Update (“Update”, available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf), addresses how we consider any evidence that is presented to us. The Update states:

[d]uring examination, the examiner should analyze the “improvements” consideration by evaluating the specification and the claims to ensure that a technical explanation of the asserted improvement is present in the specification, and that the claim reflects the asserted improvement. Generally, examiners are not expected to make a qualitative judgment on the merits of the asserted improvement. *If the examiner concludes the disclosed invention does not improve technology, the burden shifts to applicant to provide persuasive arguments supported by any necessary evidence to demonstrate that one of ordinary skill in the art would understand that the disclosed invention improves technology.* Any such evidence submitted under 37 C.F.R. § 1.132 must establish what the specification would convey to one of ordinary skill in the art and cannot be used to supplement the specification. For example, in response to a rejection under 35 U.S.C. § 101, an applicant could submit a declaration under § 1.132 providing testimony on how one of ordinary skill in the art would interpret the disclosed invention as improving technology and the underlying factual basis for that conclusion.

Update 13 (footnote omitted, emphasis added).

In this case, the Examiner concludes the present claims do not recite an improvement to technology. Final Act. 3, 5, 7–8; Ans. 4–6, 8–9.

Consequently, we focus on any evidence Appellant cites pursuant to the

Update. Here, Appellant does not cite any paragraphs in the Specification or other types of evidence. Appeal Br. 13–16; Reply Br. 4–5. Therefore, the arguments in the Appeal Brief and Reply Brief citing to *Enfish* is merely attorney argument unsupported by evidence. Appeal Br. 13–16; Reply Br. 4–5.

In addition, in *Enfish*, the Federal Circuit considered how the present invention was superior to the technology in the prior art. That is, the court considered “the specification’s emphasis that ‘the present invention comprises a flexible, self-referential table that stores data,’” “[t]he specification also teaches that the self-referential table functions differently than conventional database structures,” and “traditional databases, such as ‘those that follow the relational model and those that follow the object oriented model[,]’ are inferior to the claimed invention.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d at 1337 (citations omitted). Moreover, in *Enfish*, “[t]he structural requirements of current databases require a programmer to predefine a structure and subsequent [data] entry must conform to that structure,’ [and] the ‘database of the present invention does not require a programmer to preconfigure a structure to which a user must adapt data entry.’” *Id.* Based on the foregoing, the court determined the claims “achieve[d] other benefits over conventional databases, such as increased flexibility, faster search times, and smaller memory requirements.” *Id.* Unlike the claims of *Enfish*, the present claims do not recite an improvement in computer-related technology.

Instead, the present claims recite an abstract idea as discussed *supra*, in Section I.C.1. or at best, improving an abstract idea—not a technological improvement. The Specification indicates the additional elements (i.e., “first

computer,” “first processor,”⁴ “first memory,”⁵ “user device,” “merchant computer,” “first database,” “review queue,” “second computer,” “second processor,”⁶ “second memory,”⁷ “external data sources,” “second rules database,” “payment processing server,” and “data aggregator”) recited in the present claims are merely generic computer components used to implement the abstract idea. Spec. ¶¶ 18, 20, 21, 31, 34, 35, 40, 42, 44, 46, 47, 49, 60, 102. Further, the generic computer components, individually and in combination, do not integrate the judicial exception into a practical application.

Additionally, “a claim for a *new* abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (emphasis added). “[U]nder the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (citations omitted).

We further disagree with Appellant’s argument that, similar to *DDR Holdings*, the present claims are necessarily rooted in technology to solve problems specifically arising in the realm of technology because in situations when a transaction decision process is taking too long, this problem is solved by modifying a computer system instead of hiring more human reviewers. Appeal Br. 12–13, 21–22. The subject claim considered

⁴ This feature is recited in claim 1, but not recited in claim 11.

⁵ This feature is recited in claim 1, but not recited in claim 11.

⁶ This feature is recited in claim 1, but not recited in claim 11.

⁷ This feature is recited in claim 1, but not recited in claim 11.

by the *DDR* court pertained to clicking on an advertisement for a third-party product displayed on a host's website, the visitor is no longer being transported to the third party's website. *DDR Holdings*, 773 F.3d at 1257. In *DDR*, instead of losing visitors to the third-party's website, the host website can send its visitors to a web page on an outsource provider's server that (1) incorporates "look and feel" elements from the host website and (2) provides visitors with the opportunity to purchase products from the third-party merchant without actually entering that merchant's website. *Id.* at 1257–58. In contrast to the claims of *DDR*, the present claims do not recite incorporating "look and feel elements" from a host website and providing visitors with the opportunity to purchase products from a third-party merchant without actually entering the merchant's website.

We disagree with Appellant's argument that, similar to *Amdocs*, the present claims provides an unconventional technical solution by utilizing a distributed system such as a first computer, a second computer, and a data aggregator to reduce the extra steps and communications between the entities in the distributed systems that are inherent in conventional systems and cause unnecessary burden on the different parties involved that results in elements combined in an unconventional manner. Appeal Br. 20–21. The subject claim considered by the *Amdocs* court related to distributed architecture led to load distribution, which was an advantage over the prior art because it made it easier to keep up with record flows, allow for smaller databases, and minimize impact on network and system resources. *Amdocs (Israel) Ltd.*, 841 F.3d at 1303. Additionally, the court construed the claimed "enhance" to mean "to apply a number of field enhancements in a distrusted fashion." *Id.* at 1292, 1300. In contrast to the claims of *Amdocs*,

the present claims do not pertain to field enhancement in a distributed network.

Appellant does not make any other arguments pertaining to step 2A, prong 2. Because the present claims recite an abstract idea that is not integrated into a practical application, we proceed to Step 2B.

3. Step 2B

We agree with the Examiner's determination that the additional elements implementing the abstract idea are well-understood, routine, and conventional. Final Act. 4–6; Ans. 5 (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014); *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015); *Bancorp Servs., LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012)). The Specification supports the Examiner's determination in this regard because it explains that “first computer,” “first processor,” “first memory,” “user device,” “merchant computer,” “first database,” “review queue,” “second computer,” “second processor,” “second memory,” “external data sources,” “second rules database,” “payment processing server,” and “data aggregator” are generic components. Spec. ¶¶ 18, 20, 21, 31, 34, 35, 40, 42, 44, 46, 47, 49, 60, 102. Appellant's Specification indicates these additional elements were well-understood, routine, and conventional components because it describes them at a high level of generality and in a manner that indicates that they were sufficiently well-known. *Id.* Moreover, the additional elements recited in the present claims, analyzed individually or in combination, does not result in the claim, as a whole, amounting to significantly more than the judicial exception.

In addition, the Examiner identifies additional elements including a

“second processor,” a “second memory,” and a “data aggregator.” Final Act. 4. Claim 1 recites “a second computer comprising: a second processor; and a second memory” (claim 1 (Claim App., Appeal Br. 24–25), thus, the claimed “second processor” and “second memory” are part of the “second computer.” We, therefore, disagree with Appellant’s argument that the Examiner does not identify all the additional elements such as a “second computer” and a “data aggregator.” Appeal Br. 16–18.

We also disagree with Appellant’s argument that, similar to *Berkheimer*, the Examiner fails to provide clear and convincing evidence to support the finding that the additional elements implementing the abstract idea are well-understood, routine, and conventional. Appeal Br. 19–20; Reply Br. 5–6. Indeed, as noted above, the Examiner provides citations to numerous cases that sufficiently support this finding. Ans. 5 (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014); *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015); *Bancorp Servs., LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012). Furthermore, the Examiner cites to the Specification (Ans. 9 (citing Spec. ¶¶ 19, 20, 102, 105)) and the Specification supports the Examiner’s determination in this regard because it explains that the additional elements are generic computer components. Spec. ¶¶ 18, 20, 21, 31, 34, 35, 40, 42, 44, 46, 47, 49, 60, 102.

Appellant does not argue claims 3, 10, 11, 13, 20, 22, and 25 separately, but asserts the § 101 rejection of those claims should be withdrawn for at least the same reasons as argued for independent claim 1. Appeal Br. 9–22. Accordingly, we sustain the Examiner’s rejection of: (1) independent claims 1 and 11; and (2) dependent claims 3, 10, 13, 20, 22,

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and 25 under 35 U.S.C. § 101.

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant could have made, but chose not to make, in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3, 10, 11, 13, 20, 22, 25	101	Eligibility	1, 3, 10, 11, 13, 20, 22, 25	

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. § 1.136(a)(1)(iv).

AFFIRMED