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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STUART A. FRASER, PHILIP M. GINSBERG,
GLEN D. KIRWIN, and HOWARD W. LUTNICK

Appeal 2019-000455
Application 14/171,044
Technology Center 3600

Before J. JOHN LEE, DANIEL J. GALLIGAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–20. 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(a). Appellant identifies the real party in interest as CFPH, LLC. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The present invention relates generally to systems and methods for transferring items with restricted transferability, e.g., airline tickets, concert tickets, sporting event tickets, hotel reservations, etc., from one consumer to another. Spec. 1:21–23. Independent claim 1 is illustrative of the claims on appeal and is reproduced below with bracketed lettering added for discussion purposes:

1. An electronic authorization control system for communication over a communication network between a transfer computing system and a provider computing system and interfaces of computing systems of consumers to allow for transferability of tickets, the electronic authorization control system comprising:

a transfer computing system configured to:

[a] receive, from an input interface of a computing system of a consumer, an electronic signal representing a request to use the transfer system to transfer a ticket, in which a provider of the ticket placed on the ticket at least one restriction on transferability; and

[b] send, to a provider computing system, an electronic signal representing a request for the provider to authorize transfer of the ticket that is contrary to the at least one restriction on transferability;

[c] in response to receipt of an electronic signal representing an indication, from the provider computing system, that (1) authorizes the transfer of the ticket that is contrary to the at least one restriction on transferability and (2) verifies that the consumer is in possession of the ticket:

[d] send an electronic signal representing a notification to the consumer that the provider computing system (1) authorizes the transfer of the ticket that is

contrary to the at least one restriction on transferability and
(2) verifies that the consumer is in possession of the ticket;

[e] if the request to transfer includes a request to
advertise the ticket, then:

(a) send an electronic signal to cause,
information regarding the ticket, to be presented to
advertising interfaces of computing systems of a
plurality of consumers, and

(b) if receipt of an electronic signal
representing an acceptable offer for the ticket is
received, from a computing system of a second
consumer from the plurality of computing systems
of consumers, then generate an electronic signal to
cause to present a transfer interface to allow the
consumer and the second consumer with a
selectable option to input a request to transfer the
ticket from the consumer to the second consumer
via the transfer computing system or input a request
to transfer the ticket from the consumer to the
second consumer without the transfer computing
system;

[f] [i]f the request to transfer includes a request to
auction the ticket, then:

(a) generate an electronic signal to cause
information regarding the ticket, to be presented to auction
interfaces of computing systems of a plurality of
consumers, and

(b) if receipt of an electronic signal representing a
winning bid for the ticket is received, from a computing
system of a second consumer from the plurality of
computing systems of consumers, then generate an
electronic signal to cause to present a transfer interface to
allow the consumer and the second consumer with an
option to input a request to transfer the ticket from the

consumer to the second consumer via the transfer computing system or input a request to transfer the ticket from the consumer to the second consumer without the transfer computing system; and

[g] generate an electronic signal to cause to charge the consumer a fee to use the transfer computing system to transfer the ticket.

REJECTIONS ON APPEAL

Claims 1, 2, 14, and 15² stand rejected for obviousness-type double patenting based on claims 1–114 of Fraser I.³ *See* Ans. 3.

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 4–6.

Our review in this appeal is limited to the above rejections and the issues raised by Appellant. Arguments not made are waived. *See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.39(a)(1); MPEP § 1205.02.

ANALYSIS

A. Rejection Under § 101 for Patent-Ineligible Subject Matter

Appellant appeals the Examiner’s rejection of claims 1–20 as ineligible subject matter under § 101. Appeal Br. 12–19. Appellant’s arguments specifically address limitations recited in claim 1. *See id.* at 13. As such, we select independent claim 1 as representative of Appellant’s § 101 arguments for all claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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

² The Final Action rejected claims 1–20 rejected for obviousness-type double patenting (Final Act. 3–5); the Answer withdraws the double patenting rejection of claims 3–13 and 16–20 (Ans. 3).

³ Fraser I, US 7,574,375 B1, issued Aug. 11, 2009.

However, the Supreme Court has held that § 101 includes implicit exceptions—laws of nature, natural phenomena, and abstract ideas—which are not patent-eligible. *See Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014). In January 2019, the Office issued the 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“January 2019 Guidance”), which addresses the manner in which § 101 case law is to be applied by the Office. More recently, the Office issued an update to the 2019 Guidance to explain further the manner in which the January 2019 Guidance should be implemented. *See* October 2019 Patent Eligibility Guidance Update, 84 Fed. Reg. 55,942 (Oct. 18, 2019); October 2019 Update: Subject Matter Eligibility, *available at* https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf (“October 2019 Update”). The Board is required to adhere to the January 2019 Guidance as a matter of Office policy. *See* January 2019 Guidance 51.⁴ The January 2019 Guidance sets forth a four-part analysis for determining whether a claim is eligible subject matter under § 101; the four parts are denominated Step 1, Step 2A Prong 1, Step 2A Prong 2, and Step 2B. *See id.* at 53–56.

1. January 2019 Guidance Step 1

First, under “Step 1,” we consider whether the claimed subject matter falls within the four statutory categories set forth in § 101, namely “[p]rocess, machine, manufacture, or composition of matter.” January 2019 Guidance 53–54; *see* 35 U.S.C. § 101. Each of the relevant claims recites an

⁴ Although the Office Action at issue, as well as all the briefing for this appeal, was completed before the 2019 Guidance was issued, the 2019 Guidance “applies to all applications . . . filed before, on, or after January 7, 2019.” 2019 Guidance 50.

“electronic authorization control system.” As such, the claims are each directed to a statutory class of invention within § 101, i.e., manufactures or machines. Consequently, we proceed to the next step of the analysis.

2. January 2019 Guidance Step 2A Prong 1

Second, under “Step 2A Prong 1,” we evaluate “whether the claim recites a judicial exception, i.e., an abstract idea, a law of nature, or a natural phenomenon.” 2019 Guidance 54; *see Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216–17 (2014). The Examiner determined that the claims recite “fundamental economic practice[s],” specifically, “transferring items with restricted transferability” and “providing an opportunity for parties to enter into a specified agreement” for those items. Final Act. 5. We agree with the Examiner’s determination because, according to the January 2019 Guidance, such fundamental economic practices are certain methods of organizing human activity, one of the subject matter groupings of abstract ideas, as described in the January 2019 Guidance. January 2019 Guidance 52.

The Specification supports the Examiner’s determination that the claims recite fundamental economic practices, namely, “transferring items” between consumers and allowing “parties to enter into a specified agreement” for those items. Final Act. 5. The Specification states, “airline tickets, concert tickets, and sporting event tickets, are sold by providers to consumers with restrictions on the transferability of those items.” Spec. 1:27–29. According to the Specification, those restrictions “burden a consumer” who cannot use the tickets and, accordingly, the “object of the present invention [is] to provide systems and methods which allow consumers to transfer items with restricted transferability to other consumers.” *Id.* at 2:7–20. The items, e.g., tickets, may be transferred from

the original consumer to a second consumer if the “second consumer submits a winning bid for the item when the information is presented in a bidding interface, or an acceptable offer when the information is presented in an advertising interface.” *Id.* at 3:2–5. Fees are paid by the original consumer as an “inducement . . . in exchange for the provider granting authorization to transfer the item” or as “service fee[s] for providing [the item transfer] service.” *Id.* at 4:30–5:5, 7:3. Accordingly, the focus of the invention, as described by the Specification, is the formation of an agreement between consumers to purchase an item with transfer restrictions and an agreement to pay fees to facilitate the transfer of the purchased item.

As the Examiner determined, the claims reflect the fundamental economic practices described by the Specification. Final Act. 4–5.⁵ Limitations [a] and [b] recite requesting authorization to transfer an original consumer’s transfer-restricted ticket, i.e., to sell the ticket. Limitation [c] grants authorization to the consumer who validly owns the ticket (i.e., the seller) to sell the ticket, despite the restriction on transferability. Authorizing a restricted item to be sold is a fundamental economic practice because it is part of any sale of such a restricted item. Limitations [e] and [f] describe different ways to sell the ticket; either through advertising the ticket (e.g., posting the ticket for sale) or by auctioning the ticket. Selling items

⁵ We note that the Examiner’s determination saves for analysis at a later step the computer-related features and functions recited in the claims, i.e., “an electronic authorization control system, a communication network, a transfer computing system, a provider computing system, various electronic signals, and interfaces of computing systems of consumers.” Final Act. 6; *see id.* 4–5. This is consistent with the January 2019 Guidance. *See* January 2019 Guidance 54–56.

with a posted price and selling items through an auction are traditional marketplace selling techniques. Further, after the ticket has been sold, limitations [e] and [f] recite that the seller and purchaser can transfer the ticket directly or through an intermediary. The exchange and delivery of a purchased item are common to any sale, and both direct and brokered exchanges are common techniques to deliver a purchased item to a purchaser. Finally, limitation [g] describes charging the seller a fee for using the exchange system. Charging a fee for using services is a common economic practice. Accordingly, we agree with the Examiner's analysis and conclusion that the claims recite fundamental economic practices, namely steps to form agreements to buy and sell tickets and agreements to provide ticket transfer services for a fee.

As such, the claims recite an abstract idea, i.e., certain methods of organizing human activity, under the January 2019 Guidance and the October 2019 Update.

3. January 2019 Guidance Step 2A Prong 2

Having determined that the claims recite an abstract idea, we proceed to "Step 2A Prong 2" of the January 2019 Guidance, which requires that we evaluate whether "the claim as a whole integrates the recited judicial exception into a practical application of the exception." January 2019 Guidance 54. "A claim that integrates a judicial exception into a practical application will apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception." *Id.*; see *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78 (2012).

The January 2019 Guidance specifies that this evaluation is conducted by first “[i]dentifying whether there are any additional elements recited in the claim beyond the judicial exception(s),” then “evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.” January 2019 Guidance 54–55.

Appellant argues “the claimed subject matter is directed to improvements in communication between a transfer computing system and a provider computing system and interfaces of computing systems of consumers to allow for transferability of tickets.” Appeal Br. 12–13 (emphases omitted); *see* Reply Br. 5. Appellant explains that the claims recite “an improved interface, which provides advantages over the prior art systems and improves the efficiency of the electronic devices” by “facilitating electronic trading over a network with interfaces, which thereby help reduce the number of transactions over the network, and which may help reduce computer workload including computer resources such as memory resources processor resources, and network resources such as network bandwidth.” Appeal Br. 14, 16 (emphases omitted); *see* Reply Br. 2.

However, according to the Examiner, the “focus of the claims is not on solving a technical problem,” and “the improvement is not to the field of computers or networks, but instead to the (abstract) procedure itself.” Ans. 4 (emphases omitted). The Examiner further determined that “the reduction is only a relative reduction (i.e. this procedure causes less transactions than another procedure), rather than an improvement to the computing processes

themselves in an effort reduce database memory and processing requirements.” *Id.* (emphases omitted). We agree with the Examiner.

Appellant’s assertion that the claimed system for transferring tickets reduces the number of transactions in electronic trading, and reduces computer workload as a result (Appeal Br. 16; Reply Br. 2), is supported only by attorney argument, which “cannot take the place of evidence.” *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Appellant relies on paragraphs 6 and 7 of Fraser II⁶ and paragraphs 146–149 of Lutnick⁷ to support its assertion. Appeal Br. 13–14, 16; Reply Br. 4–6. But, as a threshold matter, Appellant fails to explain the relationship and relevance of Fraser II and Lutnick to the current application. *See* Appeal Br. 13–14, 16; Reply Br. 4–6. We note that Fraser II and the current application appear to be in the same family of patents. *Compare* Fraser II, codes (60), (63) with Spec. 1:5–18. Lutnick, however, does not readily appear to be related to the current application and is directed to different subject matter, namely, “Products and Processes for Managing Life Instruments.” Lutnick, code (54). As such, it is particularly unclear how Lutnick can be relied upon to explain features claimed in this application. Moreover, the cited portions of those publications merely describe the use of advertising or bidding interfaces. Fraser II ¶¶ 6–7; *see* Lutnick ¶¶ 146–149. Those descriptions do not, however, include any discussion that the interfaces result in a decrease in the number of transactions or improve computer performance, and in particular to “control activity over the network and control computer workload including computer resources such as memory, processor and

⁶ Fraser II, US 2014/0149155 A1, published May 29, 2014.

⁷ Lutnick, US 2013/0311208 A1, published Nov. 21, 2013.

network resources such as network bandwidth,” as Appellant has asserted. Appeal Br. 14 (emphases omitted); Reply Br. 5. Further, Appellant has not sufficiently explained how the “number of transactions” is reduced by the claimed interfaces. *See* Appeal Br. 12–14; Reply Br. 2–5. Indeed, beyond the generic use of “electronic signal[s],” both the claims and the Specification provide little to no detail explaining how the interfaces and transfer computing systems operate to reduce workload. Accordingly, Appellant does not provide persuasive evidence that the claimed system reduces the number of transactions, let alone that it represents a technical improvement on a computer.

As the Examiner points out (Ans. 4), even if we assumed the claimed system reduces the number of transactions for electronic trading, the reduction in the number of transactions is the result of the implementation of the abstract idea, not the result of some improvement to computer or network functionality. Indeed, as the Specification states, the invention is an improvement “allow[ing] consumers to transfer items with restricted transferability to other consumers,” addressing the problem of “restrictions on transferability [that] may greatly burden a consumer.” Spec. 2:7–9, 2:18–20. Such an improvement to a fundamental economic activity is an improvement to an abstract idea, rather than an improvement to a computing or networking system. As such, Appellant does not persuade us that the claims improve computing or network technology. Because Appellant provides no persuasive evidence or argument that the claims improve an electronic interface or some other computing function, Appellant’s argument citing *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018), is unavailing. *See* Appeal Br. 15–16.

Additionally, none of the other indicia of integration in the January 2019 Guidance are present in the claims. January 2019 Guidance 55; *see* MPEP § 2106.05(a)–(c), (e). For example, the claims do not recite a particular machine and, instead, generically recite “a transfer computing system.” Nor do the claims recite the “[t]ransformation and reduction of an article ‘to a different state or thing.’” *Bilski*, 561 U.S. 593, 604 (2010); MPEP § 2106.05(c).

Therefore, we determine that the claims are not directed to a specific asserted improvement in computer technology or otherwise integrated into a practical application. Consequently, we conclude the claims are “directed to” a judicial exception. January 2019 Guidance 54.

4. 2019 Guidance Step 2B

Having concluded that the claims recite a judicial exception but do not integrate the judicial exception into a practical application, we finally turn to whether the claims provide an “inventive concept,” i.e., whether the additional elements beyond the exceptions, individually and as an ordered combination, amount to “significantly more” than the exceptions themselves. January 2019 Guidance 56.

The Examiner determined the claims do “not include additional elements that are sufficient to amount to significantly more than the judicial exception,” either alone or as an ordered combination. Final Act. 6. Specifically, the Examiner explained, “the additional limitations of an electronic authorization control system, a communication network, a transfer computing system, a provider computing system, various electronic signals, and interfaces of computing systems of consumers . . . perform[] generic computer functions routinely used in computer applications.” *Id.*

Appellant argues, “the claimed features above are not well-understood, routine or conventional” and “the claims recite specific computer operations that allow the computer to perform a function that conventional computers cannot perform.” Reply Br. 4 (emphases omitted). Appellant further argues, “the claim language shows the magnitude and complexity of the network communication that a human could not possibl[y] carry out the claimed operations manually,” and “[t]he technical structure recited in the claims expedites the process in a way that a person making these computations could not.” *Id.* (emphases omitted).

We are not persuaded by Appellant’s arguments. Contradicting Appellant’s position that conventional computers cannot perform the claimed item transfer, the Specification describes that the “systems and methods of the present invention may be implemented using *any* suitable communication network.” Spec. 9:1–2 (emphasis added). For example, the Specification discloses that “transfer system 2 may be implemented as a web site that is hosted on an Internet web page server 41, which may be any suitable server.” *Id.* at 9:4–5. The Specification also discloses that “[a]ny suitable Internet connections 43 may be used in communication network 46 in accordance with the present invention.” *Id.* at 9:20–21. Thus, the Specification repeatedly describes that “any” (i.e., conventional) server or internet network connection can be used to implement the claimed invention. Further, the combination of computing elements and functions operate in a routine and conventional manner; e.g., interfaces receive input, information is analyzed and manipulated based on that input, and resultant data is sent over a network. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016).

Furthermore, the claims do not recite a “magnitude” or “complexity” of processes that only a computer could process, as Appellant asserts. Reply Br. 4. The claims do not recite any particular number of transactions to be carried out, and a single transaction is within the scope of the claims. Still further, even if the claims did “expedite[]” processing for a large number of transactions, such repetitive computing does not transform the abstract idea into “significantly more.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”); *see Parker v. Flook*, 437 U.S. 584, 594 (1978).

Thus, we conclude that the claims do not provide an inventive concept because the additional elements recited in the claims do not provide significantly more than the recited judicial exception, whether the claims’ limitations are considered individually or as an ordered combination.

Additionally, Appellant argues the claims “do not preempt all ways of achieving the intended result because the claimed recitations are very specific and do not cover all possible approaches.” Appeal Br. 17 (emphasis omitted). Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Where claims recite only patent-ineligible subject matter, as they do here, “preemption concerns are fully addressed and made moot.” *Id.*

Furthermore, Appellant’s argument that the “lack of prior art rejections” indicates patent eligibility (Appeal Br. 18) is unavailing. “The ‘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.

Accordingly, we are not persuaded that the claims recite patent-eligible subject matter. Further, Appellant has not proffered sufficient evidence or argument to persuade us that any of the limitations in the remaining claims provide a meaningful limitation that transforms the claims into a patent-eligible application. *See* Appeal Br. 19. Therefore, we sustain the rejection of claims 1–20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

B. Obviousness-Type Double Patenting

Claims 1, 2, 14, and 15 are rejected on the ground of obviousness-type double patenting over claims 1–114 of Fraser I. Ans. 3. Appellant argues the Examiner “does not show how any specific claim of the present application corresponds to any specific reference claim.” Appeal Br. 20–21.

We are persuaded the Examiner erred. In the Answer, the Examiner only describes how the instant claims and the claims in Fraser I “both . . . are directed towards allowing the transferability of tickets wherein there are restrictions on the tickets.” Ans. 9. The Examiner does not, however, otherwise explain which specific limitations recited in the instant claims would have been obvious over which limitations recited in the claims of Fraser I. *See id.* As such, we reverse the Examiner’s obviousness-type double patenting rejection of claims 1–20 over claims 1–114 of Fraser I.

CONCLUSION

In Summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-20	101	Patent eligibility	1-20	
1, 2, 14, 15		Obviousness-type double patenting		1, 2, 14, 15
Overall Outcome			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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED