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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRUCE JOHN CHANTRY and GEORGE D. BLANKENSHIP

Appeal 2019-000933
Application 14/161,728
Technology Center 3600

BEFORE LINZY T. McCARTNEY, BETH Z. SHAW, and ALEX S. YAP,
Administrative Patent Judges.

SHAW, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant,¹ Lincoln Global, Inc.,
appeals from the Examiner's decision to reject claims 1–20. Final Act. 1.
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 Lincoln Global, Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to accommodating multi-party business relationships. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system, comprising:
 - a supplier server computer, associated with a supplier, having a processor and a memory, the supplier server computer provides:
 - a supplier web site providing on-line ordering and account management functionality to original equipment manufacturers and end users of the original equipment manufacturers; and
 - an account database of original equipment manufacturer accounts and end user accounts, wherein the memory stores computer-executable instructions that, when executed by the processor, configure the processor to:
 - establish a computerized association between an original equipment manufacturer account of an original equipment manufacturer and an end user account of an end user within the supplier server computer in response to the end user creating the end user account with the supplier via the supplier web site;
 - credit the original equipment manufacturer account of the original equipment manufacturer with a first set of account credits in response to the original equipment manufacturer purchasing a first supplier subsystem from the supplier via the supplier web site;
 - based on the computerized association, credit the original equipment manufacturer account with a second set of account credits in response to the end user, of a product of the original equipment manufacturer that includes the first supplier subsystem, making a purchase via the supplier web site; and
 - enhance a redemption value of at least one of the first or second set of account credits of the original equipment manufacturer, by applying a multiplier to account credits of at least one of the first or second set of account credits, when the original equipment manufacturer redeems the account credits of at least one of the first or second set of account credits to

purchase a second supplier subsystem from the supplier via the supplier web site.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Austin	US 2002/0082920 A1	June 27, 2002
Rolf	US 2007/0219872 A1	Sept. 20, 2007
Placek	US 2008/0313074 A1	Dec. 18, 2008
Wedderburn	US 2015/0127438 A1	May 7, 2015

REJECTIONS

Claims 1–20 are rejected under 35 U.S.C. § 101.

Claims 1, 2, 6–8, 10–14, 19, and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Austin and Rolf. Final Act. 7–18.

Claims 3, 4, 5, 15, 16, and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over Austin, Rolf, and Wedderburn. *Id.* at 18–20.

Claims 9 and 18 are rejected under 35 U.S.C. § 103 as being unpatentable over Austin, Rolf, Wedderburn, and Placek. *Id.* at 20–22.

OPINION

Section 101 Rejection

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) (quotation marks and citation omitted).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo*

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

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 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 183 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 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, 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 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., Diehr*, 450 U.S. 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.*

The U.S. Patent and Trademark Office (“USPTO”) recently published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under that Revised 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) (9th Ed., Rev. 08.2017, Jan. 2018)).

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.

See Revised Guidance.

Abstract Idea

For the following reasons, we conclude the claims recite a fundamental economic practice, which is one of certain methods of organizing human activity identified in the Revised Guidance, and thus, an abstract idea. *See* Revised Guidance, 84 Fed. Reg. at 52, 53 (listing “[c]ertain methods of organizing human activity—fundamental economic principles or practices” as one of the “enumerated groupings of abstract ideas”).

Appellant addresses the claims as a group, and we treat claim 1 as representative. The claim is directed to an abstract idea because it is directed to a fundamental economic practice, which is one of certain methods of

organizing human activity, as discussed below. The steps of claim 1, including, with italics,

a supplier web site providing on-line *ordering and account management functionality to original equipment manufacturers and end users of the original equipment manufacturers*; and

an account database of *original equipment manufacturer accounts and end user accounts*, wherein the memory stores computer-executable instructions that, when executed by the processor, configure the processor to:

establish a computerized association between an original equipment manufacturer account of an original equipment manufacturer and an end user account of an end user within the supplier server computer in response to the end user creating the end user account with the supplier via the supplier web site;

credit the original equipment manufacturer account of the original equipment manufacturer with a first set of account credits in response to the original equipment manufacturer purchasing a first supplier subsystem from the supplier via the supplier web site;

based on the computerized association, credit the original equipment manufacturer account with a second set of account credits in response to the end user, of a product of the original equipment manufacturer that includes the first supplier subsystem, making a purchase via the supplier web site; and

enhance a redemption value of at least one of the first or second set of account credits of the original equipment manufacturer, by applying a multiplier to account credits of at least one of the first or second set of account credits, when the original equipment manufacturer redeems the account credits of at least one of the first or second set of account credits to purchase a second supplier subsystem from the supplier via the supplier web site

recite steps of establishing *an association between an original equipment manufacturer account of an original equipment manufacturer and an end*

user account of an end user, in response to the end user creating the end user account with the supplier, crediting the original equipment manufacturer account of the original equipment manufacturer with a first set of account credits in response to the original equipment manufacturer purchasing a first supplier subsystem from the supplier, crediting the original equipment manufacturer account with a second set of account credits in response to the end user, of a product of the original equipment manufacturer that includes the first supplier subsystem, making a purchase, and enhancing a redemption value of at least one of the first or second set of account credits of the original equipment manufacturer, by applying a multiplier to account credits of at least one of the first or second set of account credits, when the original equipment manufacturer redeems the account credits of at least one of the first or second set of account credits to purchase a second supplier subsystem from the supplier.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent ineligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas include (1) mathematical concepts, (2) certain methods of organizing human activity, and (3) mental processes. Among those certain methods of organizing human activity listed in the Revised Guidance are fundamental economic practices, such as the concept of intermediated settlement in *Alice*, and the concept of hedging in *Bilski*. Like those concepts, claim 1 also recites a fundamental economic practice. Specifically, the italicized steps fall under the umbrella of economic practices, including managing transactions or sales activities, because “making a purchase” and “redeem[ing] account credits” would ordinarily take place in a sale or

market transaction, which occurs in our system of commerce. The “making a purchase” is an economic act, and the “product” is an item sold in commerce. *See* Spec. ¶ 2 (“Certain embodiments of the present invention relate to business relationships. More particularly, certain embodiments of the present invention relate to systems and methods to accommodate business relationships between a supplier, an original equipment manufacturer (OEM), and an end user.”).

Claim 1 is, thus, similar to claims that courts have concluded recite a fundamental economic practice. *See, e.g., Bilski*, 561 U.S. at 611 (determining that hedging risk is a “fundamental economic practice long prevalent in our system of commerce”); *Alice*, 573 U.S. at 219–20 (determining that intermediated settlement is a fundamental economic practice); *see also* Revised Guidance, 84 Fed. Reg. at 52 n.13.

Thus, we conclude claim 1 recites a fundamental economic practice, which is one of certain methods of organizing human activity identified in the Revised Guidance, and thus an abstract idea.

In accordance with the Revised Guidance, and looking to MPEP §§ 2106.05(a)–(c) and (e)–(h), we determine that the additional elements of claim 1, both individually and as an ordered combination, do not integrate a judicial exception, in this case the abstract idea of a fundamental economic practice, into a practical application. Claim 1 is directed to little more than the implementation of the abstract idea on generic computer servers and devices. The claimed “supplier server computer,” “processor,” “memory” and “web site” are recited at a high level of generality and merely invoked as a tool to perform the process of claim 1. Simply implementing the abstract idea on a generic computer is not a practical application of the abstract idea.

See, e.g., Fig. 1; Spec. ¶¶ 17–24 (“‘Computer’ or ‘processing element’ or ‘computer device’ or ‘processor’ as used herein includes, but is not limited to, any programmed or programmable electronic device that can store, retrieve, and process data.”).

Accordingly, the claim as a whole does not integrate the abstract idea into a practical application because the claim limitations do not impose any meaningful limits on practicing the abstract idea. Stated differently, the claims do not (1) improve the functioning of a computer or other technology, (2) are not applied with any particular machine (except for generic computer components), (3) do not effect a transformation of a particular article to a different state, and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim, as a whole, is more than a drafting effort designed to monopolize the exception. *See* MPEP §§ 2106.05(a)–(c), (e)–(h).

Inventive Concept

Because we determine that claim 1 is “directed to” an abstract idea, we next consider whether claim 1 recites an “inventive concept.” The Examiner determined that claim 1 does not recite an inventive concept because the additional elements in the claim do not amount to “significantly more” than an abstract idea. *See* Final Act. 4–6.

We agree with the Examiner’s determination in this regard. The additional elements recited in claim 1 include “supplier server computer,” “processor,” “memory” and “web site.” The claim recites these elements at a high level of generality, and the written description indicates that the elements are generic. *See, e.g.*, Fig. 1; Spec. ¶¶ 17–24 (“‘Computer’ or

‘processing element’ or ‘computer device’ or ‘processor’ as used herein includes, but is not limited to, any programmed or programmable electronic device that can store, retrieve, and process data.”).

Using generic computer components to perform abstract ideas does not provide the necessary inventive concept. *See Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”). Thus, these elements, taken individually or together, do not amount to “significantly more” than the abstract idea itself.

Preemption is a driving concern when determining patent eligibility. *See id.* at 216–17. Patent law cannot inhibit further discovery by improperly tying up the future use of the building blocks of human ingenuity. *See id.* (citing *Mayo*, 566 U.S. at 85–86). Although preemption is characterized as a driving concern for patent eligibility, preemption itself is not the test for patent eligibility. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

To the extent Appellant contends that the recited limitations, including those detailed above in connection with *Alice* step one, add significantly more than the abstract idea to provide an inventive concept under *Alice/Mayo* step two (*see App. Br.* 9–11), these limitations are not *additional* elements *beyond* the abstract idea, but rather are directed to the abstract idea as noted previously. *See Guidance*, 84 Fed. Reg. at 56 (instructing that

additional recited elements should be evaluated in *Alice/Mayo* step two to determine whether they (1) *add* specific limitations that are not well-understood, routine, and conventional in the field, or (2) simply *append* well-understood, routine, and conventional activities previously known to the industry (citing MPEP § 2106.05(d)).

Rather, the recited “supplier server computer,” “processor,” “memory” and “web site” are the additional recited elements whose generic computing functionality is well-understood, routine, and conventional, as discussed in the Answer, and which Appellant does not address in the Reply Brief. *See* Ans. 27, 28; *Mortgage Grader Inc. v. First Choice Loan Services, Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (noting that components such as an “interface,” “network,” and “database” are generic computer components that do not satisfy the inventive concept requirement); *buySAFE v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”).

Accordingly, we sustain the Examiner’s rejection of the pending claims under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

Section 103 Rejections

Independent claim 1 recites, in part,

enhance a redemption value of . . . account credits of the original equipment manufacturer, by applying a multiplier to account credits of at least one of the first or second set of account credits, when the original equipment manufacturer redeems the account credits of . . . the first or second set . . . to purchase a second supplier subsystem from the supplier via the supplier web site.

Appellant argues the Examiner erred because the cited art fails to disclose, suggest, or otherwise render obvious at least this feature of independent claim 1. In particular, Appellant argues the cited portions of Austin teach that the customer *earns* more points when purchasing a promoted item, not “when the original equipment manufacturer *redeems* the account credits of . . . the first or second set . . . to purchase a second supplier subsystem from the supplier via the supplier web site.” We agree. Although the cited portions of Austin contemplate “redemption values” in paragraph 81, the discussion in paragraph 58 of Austin relates to promotions for purchases. Thus, although the cited portions of Austin may discuss applying a multiplier of points to a purchase, and references the concept of redeeming points in general, the Examiner has not sufficiently explained how Austin teaches the claimed enhancing a redemption value of account credits by applying a multiplier to account credits of at least one of the first or second set of account credits, when the original equipment manufacturer *redeems account credits* of the first or second set to purchase a second supplier subsystem from the supplier via the supplier web site.

Accordingly, on this record, we do not sustain the § 103 rejection of claim 1. For the same reasons, we do not sustain the § 103 rejection of claims 2, 6–8, 10–14, 19, and 20. Additionally, we do not sustain the rejection of claims 3, 4, 5, 15, 16, and 17 under 35 U.S.C. § 103 as being unpatentable over Austin, Rolf, and Wedderburn, because the Examiner does not allege that Wedderburn cures the deficiencies discussed above. Additionally, we do not sustain the rejection of claims 9 and 18 under

35 U.S.C. § 103 as being unpatentable over Austin, Rolf, Wedderburn, and Placek, because the Examiner does not allege that Placek cures these deficiencies.

CONCLUSION

We affirm the Examiner's rejection of claims 1–20 under 35 U.S.C. § 101.

We reverse the Examiner's rejection of claims 1, 2, 6–8, 10–14, 19, and 20 under 35 U.S.C. § 103 as being unpatentable over Austin and Rolf.

We reverse the Examiner's rejection of claims 3, 4, 5, 15, 16, and 17 under 35 U.S.C. § 103 as being unpatentable over Austin, Rolf, and Wedderburn.

We reverse the Examiner's rejection of claims 9 and 18 under 35 U.S.C. § 103 as being unpatentable over Austin, Rolf, Wedderburn, and Placek.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–20	101		1–20	
1, 2, 6–8, 10–14, 19, 20	103	Austin, Rolf		1, 2, 6–8, 10–14, 19, 20
3, 4, 5, 15, 16, 17	103	Austin, Rolf, Wedderburn		3, 4, 5, 15, 16, 17
9, 18	103	Austin, Rolf, Wedderburn, Placek		9, 18
Overall Outcome			1–20	

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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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED