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11/966,540	12/28/2007	Mike Page	0113-US-01	5305

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LEVEL 3 COMMUNICATIONS, LLC
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EXAMINER
NGUYEN, LOAN T

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte MIKE PAGE and JEFF COX

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Appeal 2019-001795
Application 11/966,540
Technology Center 2100

_____

Before MAHSHID D. SAADAT, CARL L. SILVERMAN, and
MICHAEL J. ENGLE, *Administrative Patent Judges.*

ENGLE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's
decision rejecting claims 9–13, 15–20, and 22–27, which are all of the
claims pending in the application. A telephonic hearing was held on May
14, 2020. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

_____

[1] We use the word "Appellant" to refer to "applicant" as defined in 37
C.F.R. § 1.42(a). Appellant identifies Level 3 Communications, LLC as the
real party in interest. Appeal Br. 3.

TECHNOLOGY

The application relates to techniques to "monitor back-up write events from the database servers on the network to a network back-up server and correct failed back-up attempts." Spec. Abstract.

ILLUSTRATIVE CLAIM

Claim 9 is illustrative and reproduced below with certain limitations at issue emphasized:

9. A method on a computer of administering a plurality of database servers connected within a network comprising:

requesting event log information from each of the plurality of database servers within the network, the database servers each comprising one or more databases;

receiving the requested event log information;

parsing the event log information to identify one or more of an event entry indicating a successful database back-up write and an event entry indicating a failed database back-up write to a first network back-up server;

creating, upon identification of the failed database back-up write, a configuration file adapted to cause a specific database server experiencing the failed database back-up write to attempt a new database back-up write to correct the failed database back-up write;

transmitting the configuration file to the specific database server;

requesting configuration information from the specific database server, wherein the configuration information comprises at least a state of the specific database server;

receiving the configuration information from the specific database server; and

altering, based on the configuration information, a frequency of the new database back-up write.

REFERENCES

The Examiner relies upon the following prior art references:

Clark	US 2007/0198789 A1	Aug. 23, 2007
Ojalvo	US 7,882,073 B1	Feb. 1, 2011
Terretta	US 2001/0027491 A1	Oct. 4, 2001

REJECTIONS

Claims 9–13, 15–20, and 22–27 stand rejected under 35 U.S.C. § 101 as being directed to an abstract idea without significantly more. Final Act. 9–10.

Claims 9–13, 15–20, and 22–27 stand rejected under 35 U.S.C. § 103 as obvious over the combination of Clark, Ojalvo, and Terretta. Final Act. 12.

ISSUES

1.   Did the Examiner err in concluding that claim 9 was directed to an abstract idea without significantly more?

2.   Did the Examiner err in finding Ojalvo teaches or suggests "requesting configuration information from the specific database server, wherein the configuration information comprises at least a state of the specific database server" and "receiving the configuration information from the specific database server," as recited in claim 9?

ANALYSIS

§ 101

In 2019, the U.S. Patent & Trademark Office published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"); USPTO, *October 2019 Update: Subject Matter Eligibility*, available at

https://www.uspto.gov/sites/default/files/documents/
peg_oct_2019_update.pdf ("Oct. Update"). Under that guidance, we look to
the following steps to determine whether the claim recites the following
items:

USPTO Step	Does the claim recite ___?	MPEP §
1	A process, machine, manufacture, or composition of matter	2106.03
2A, Prong 1	A judicial exception, such as a law of nature or any of the following groupings of abstract ideas: 1) Mathematical concepts, such as mathematical formulas; 2) Certain methods of organizing human activity, such as a fundamental economic practice; or 3) Mental processes, such as an observation or evaluation performed in the human mind.	2106.04
2A, Prong 2	Any additional limitations that integrate the judicial exception into a practical application	2106.05(a)–(c), (e)–(h)
2B	Any additional limitations beyond the judicial exception that, alone or in combination, were not "well-understood, routine, conventional"	2106.05(d)

See Guidance 52, 55, 56. Under the Guidance, if the claim does not recite a
judicial exception, then it is eligible under § 101 and no further analysis is
necessary. *Id.* at 54. Similarly, under the Guidance, "if the claim as a whole
integrates the recited judicial exception into a practical application of that
exception," then no further analysis is necessary. *Id.* at 53, 54. Here, neither
Appellant nor the Examiner raise any dispute with respect to USPTO Step 1,
so we focus our analysis on USPTO Step 2A, Prongs 1 and 2.

The Examiner concludes that the first three method steps (specifically, the first "requesting" step, the first "receiving" step, and the "parsing" step) are "similar to other ideas found to be abstract by various courts, such as [d]ata recognition and storage." Ans. 8. The Examiner further concludes that the remaining steps "are routine functions being implemented on a generic computer" that "are merely field of use and insignificant extra-solution activities." *Id.*

For USPTO Step 2A, Prong 1, we agree with the Examiner that parts of the independent claims recite an abstract idea. For example, "receiving . . . information" and "parsing the . . . information" can be performed entirely in the human mind and therefore constitute mental processes, which are an abstract idea. Guidance 52. Nevertheless, for Prong 2, we agree with Appellant that here the additional elements beyond the abstract idea integrate that abstract idea into a practical application. For example, the specific information requested, received, and parsed is "event log information" that is used "to identify" entries "indicating a successful database back-up write" and "a failed database back-up write." "[U]pon identification of the failed database back-up write," the claims require "creating . . . a configuration file" that will cause the database server with the failed back-up "to attempt a new database back-up write to correct the failed database back-up write." The claims separately require requesting and receiving "configuration information" from the same database server with the failed back-up and "altering . . . a frequency of the new database back-up write" "based on the configuration information." This is significantly more than merely "data recognition and storage," field of use, or insignificant extra-solution activities. Instead, such additional elements set forth *how* to

address a failed back-up, i.e., the solution itself. *See RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017) ("[S]oftware patent claims satisfy *Alice* step one when they are directed to a specific implementation of a solution to a problem in the software arts, such as an improvement in the functioning of a computer." (quotation omitted)).

Accordingly, we do not sustain the Examiner's rejection under § 101 of independent claims 9, 16, and 23, and their dependent claims 10–13, 15, 17–20, 22, and 24–27.

§ 103

Independent claims 9, 16, and 23 recite "requesting configuration information *from* the specific database server, wherein the configuration information comprises at least a state of the specific database server" and "receiving the configuration information *from* the specific database server."

The Examiner relies on Ojalvo as teaching or suggesting these limitations. Ans. 11. According to the Examiner, in Ojalvo, "the database server . . . operates to <u>receive back up request</u>, wherein the backup requests identifies a plurality of <u>database components</u> (configuration information)" and the database server "monitors <u>status</u> (state) of each of plurality of server backup request (success and/or failure)." *Id.* (citing Ojalvo 3:1–26, 4:20–26, 4:40–63). At best, this demonstrates that information is requested and received *by* the database server. The claims, however, require requesting and receiving such information *from* the database server. The Examiner has not sufficiently explained how Ojalvo teaches this limitation.

Accordingly, we do not sustain the Examiner's rejection of independent claims 9, 16, and 23, and their dependent claims 10–13, 15, 17–20, 22, and 24–27.

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DECISION

The following table summarizes the outcome of each rejection:

Claims Rejected	35 U.S.C. §	Basis / Reference(s)	Affirmed	Reversed
9–13, 15–20, 22–27	101	Eligibility		9–13, 15–20, 22–27
9–13, 15–20, 22–27	103	Clark, Ojalvo, Terretta		9–13, 15–20, 22–27
Overall				9–13, 15–20, 22–27

REVERSED