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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DOMINIC CROSTHWAITE and LEWIS C. FINDLAY

Appeal 2019-001811
Application 13/209,949
Technology Center 3600

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and
GARTH D. BAER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–8 and 10–19. We have jurisdiction over the pending rejected claims 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. Appellant identifies Cantor Index, LLC as the real party in interest. (Appeal Br. 3.)

THE INVENTION

Appellant's disclosed and claimed invention is directed to a trading platform whereby a prospective user accesses a web site, applies for a credit account, and begins trading activity, and in which the trading platform determines a risk value for an order to trade a particular betting product. (Spec. 4:5–9, 5:3–4.)

Independent claim 1, reproduced below, is illustrative of the subject matter on appeal:

1. A method, comprising:

receiving, by at least one processor, identification information associated with a user from a remote device during a communication session;

transmitting, by the at least one processor, a request for credit information to one or more electronic databases, the request including at least a portion of the identification information;

receiving, by the at least one processor, the requested credit information from the one or more electronic databases;

generating, by the at least one processor, an account decision matrix in a memory;

generating, by the at least one processor, a credit check rules table in the memory;

joining, by the at least one processor, the account decision matrix and the credit check rules table;

identifying, by the at least one processor, a type of account identified from a result of the join;

opening, by the at least one processor, an account of the type identified from the result;

providing, by the at least one processor, the remote device access to the opened account during the communication session;

receiving, by the at least one processor, from the remote device a request to place a first order to trade a product and a request to place a second order to trade a product, wherein the product associated with the first order and the product associated with the second order comprise a betting product;

determining, by the at least one processor, a risk value for the first order and a risk value for the second order;

determining, by the at least one processor, whether to approve the first order based at least in part on the risk value determined for the first order and one or more balances for the account, and whether to approve the second order based at least in part on the risk value determined for the second order and the one or more balances for the account,

if the first order is approved, transmitting, by the at least one processor, the first order to an electronic exchange; and

if the second order is approved, transmitting by the at least one processor the second order to the electronic exchange.

Appeal Br. 16–17. (Claims Appendix.)

REJECTION

The Examiner rejected claims 1–8 and 10–19 under 35 U.S.C. § 101 because the claims are directed toward a judicial exception (abstract idea) without significantly more. (Final Act. 2.)

ISSUE ON APPEAL

Appellant’s arguments in the Appeal and Reply Briefs present the following issue:²

² Rather than reiterate the arguments of Appellant and the positions of the Examiner, we refer to the Appeal Brief (filed Aug. 27, 2018); the Reply Brief (filed Dec. 31, 2018); the Final Office Action (mailed Mar. 5, 2018); and the Examiner’s Answer (mailed Nov. 2, 2018) for the respective details.

Whether the Examiner erred in finding claims 1–8 and 10–19 are directed to a judicial exception without significantly more. (Appeal Br. 7–14; Reply Br. 2.)

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner concludes exemplary claim 1 is patent-ineligible under 35 U.S.C. § 101 because claim 1 is directed to the abstract idea of “*establishing and providing access to a user’s account.*” (Final Act. 3.) The Examiner further concludes that there is nothing in the claims that is significantly more than this abstract idea, given that the additional elements “are simply a generic recitation of a processor performing its generic computer functions” (Final Act. 5), and

the claim does not effect an improvement to another technology or technical field and to the functioning of a computer itself; and the claim does not move beyond a general link of the use of an abstract idea to a particular technological environment.

(Final Act. 6.)

Appellant argues that “the claimed operations are akin to the filter tool held eligible in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC* (Federal Circuit 2016) (‘Bascom’) because the claimed operations filter user identification information.” (Appeal Br. 8; *see also* Appeal Br. 11–12.)

Appellant contends “the claimed operations perform a new function” (Appeal Br. 9), relying on “the absence of prior art rejections” (Appeal Br. 9) and the disclosure’s statement that

a trading platform may be operable to **activate a new account for a prospective user in real time or substantially in real time.**

(Appeal Br. 9, quoting Spec. 3:27–28, emphasis in original.) For the reasons set forth below, we are not persuaded the Examiner erred.

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S. C. § 101. Here, independent claim 1 and its dependent claims relate to a method, and independent 12 and its dependent claims relate to an apparatus — *i.e.*, a process, or machine, respectively. However, the Supreme Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 598–99 (2013)). The “abstract ideas” category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice*, 573 U.S. at 216–17.

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 217. The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* 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 v. Kappos*, 561 U.S. 593, 611 (2010)); mathematical concepts (*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. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If the claims are directed to a patent-ineligible concept, the second step in the *Alice/Mayo* analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). In other words, the second step is to “search for an ‘inventive concept’ — *i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73.) 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. 573 U.S. at 221. A transformation into a patent-eligible application requires more than simply stating the abstract idea while adding the words “apply it.” *Id.*

Further to the *Alice/Mayo* analytical framework, after the mailing of the Answer and the filing of the Brief in this case, the USPTO published revised guidance on the application of Section 101. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019)

(hereinafter “Revised Guidance”). Under the 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* 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, does the Office 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 Revised Guidance.

In evaluating the claims at issue, we consider claim 1 as representative, consistent with how Appellant and the Examiner analyze the claims. *See* 37 C.F.R. § 41.37(c)(1)(iv)(2016). Omitting the portions of the claim invoking use of generic technology (which are discussed separately below), the remaining limitations of claim 1 elaborate on a method of opening an account and approving or rejecting two orders, via the steps of:

- (a) receiving . . . identification information associated with a user . . . during a communication session;

- (b) transmitting . . . a request for credit information . . . the request including at least a portion of the identification information;
- (c) receiving . . . the requested credit information . . .;
- (d) generating . . . an account decision matrix . . .;
- (e) generating . . . a credit check rules table . . .;
- (f) joining . . . the account decision matrix and the credit check rules table;
- (g) identifying . . . a type of account identified from a result of the join;
- (h) opening . . . an account of the type identified from the result;
- (i) providing . . . the remote device access to the opened account during the communication session;
- (j) receiving . . . a request to place a first order to trade a product and a request to place a second order to trade a product, wherein the product associated with the first order and the product associated with the second order comprise a betting product;
- (k) determining . . . a risk value for the first order and a risk value for the second order;
- (l) determining . . . whether to approve the first order based at least in part on the risk value determined for the first order and one or more balances for the account, and whether to approve the second order based at least in part on the risk value determined for the second order and the one or more balances for the account,
- (m) if the first order is approved, transmitting . . . the first order to an electronic exchange; and
- (n) if the second order is approved, transmitting . . . the second order to the electronic exchange.

Apart from the use of generic technology (discussed further below), each of these limitations describes steps taken using an applicant's credit information to open an account, and subsequently deciding whether to approve two orders regarding a "betting product," based on determined risk values and account balances.

As stated in the Revised Guidance, methods of organizing human activity considered an abstract idea include “fundamental economic principles or practices (including hedging, insurance, [and] mitigating risk); [and] managing . . . interactions between people (including . . . following rules or instructions).” (Revised Guidance, 84 Fed. Reg. at 52). The claim 1 subject matter of opening an account in which orders are related to a “betting product,” and in which the decision to approve an order is based in part on a “risk value,” falls under this description. *See, e.g., Credit Acceptance v. Westlake Services*, 859 F.3d 1044, 1054 (Fed. Cir. 2017) (processing an application for financing a purchase); *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (holding that claims are abstract where they “recite nothing more than the collection of information to generate a ‘credit grading’ and to facilitate anonymous loan shopping”); *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.”)

Therefore, we agree with the Examiner that the subject matter of claim 1 recites an abstract idea, as do the remaining claims.

Further pursuant to the Revised Guidance, we consider whether there are additional elements set forth in claim 1 that integrate the judicial exception into a practical application. Revised Guidance, 84 Fed. Reg. at 54–55. Here, the abstract idea of claim 1 is carried out using “at least one processor” that interacts with “a remote device,” “one or more electronic databases,” “a memory,” and “an electronic exchange.” These additional elements do not integrate the judicial exception into a practical application, because there is no improvement to technology, but rather application of

preexisting technology to implement the abstract idea. “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Mayo*, 566 U.S. at 77.

Nor does the subject matter of claim 1 contain additional elements that implement the judicial exception with a “particular machine,” because the claims do not specify any details in regard to the processor. *See* MPEP § 2106.05(b). Further, the method does not transform matter; at best it transforms information. *See* MPEP § 2106.05(c). Nor does claim 1 have any other meaningful limitations (MPEP § 2106.05(e)), or any of the other considerations set forth in the Revised Guidance regarding a determination of whether additional elements integrate the judicial exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 55. Accordingly, we conclude that the subject matter of claim 1 (and the remaining claims) is directed to fundamental economic principles or practices and managing personal behavior or relationships or interactions between people, which are examples of the certain methods of organizing human activity, and thus an abstract idea, and the additional elements recited therein do not integrate the abstract idea into a practical application.

Turning to the second step of the *Alice* inquiry, we consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 66, 79, 78 (2012)). We do not agree with Appellant that additional elements of claim 1, whether individually or in combination, add “significantly more” to the basic abstract idea encompassed by the claim sufficient to transform the claimed abstract idea into a patent-eligible

application. *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.”). As discussed above, Appellant submits that when using the claimed subject matter, “a trading platform may be operable to activate a new account for a prospective user in real time or substantially in real time.” (Appeal Br. 9, quoting Spec. 3:27–28.) However, other than using generic technology — a processor and a memory — these improvements are elaborations on the basic abstract idea itself, in which

the prospective user need not mail any information (such as identification information or credit information, for example) to trading platform 20 when applying for a trading account

(Spec. 17:14–17), thus sparing the user from “delays associated with mailing information to or from the account provider.” (Spec. 17:19–20.) “It is clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1359 (Fed. Cir. 2018). Moreover, “[p]atent law does not protect claims to an ‘asserted advance in the realm of abstract ideas . . . no matter how groundbreaking the advance.’” 890 F.3d at 1359 (Fed. Cir. 2018).

Appellant’s reliance on *Bascom* is unavailing. (Appeal Br. 8–10.) There, the court held eligible claims directed to a technology-based solution to filter Internet content that overcame existing problems with other Internet filtering systems by making a known filtering solution — namely a “one-size-fits-all” filter at an Internet Service Provider (ISP) — more dynamic and efficient via individualized filtering at the ISP. *Bascom*, 827 F.3d at 1351. Notably, this customizable filtering solution improved the computer system’s performance and, therefore, was patent-eligible. *See id.* But unlike

the filtering system improvements in *Bascom* that added significantly more to the abstract idea in that case, the claimed invention here uses generic computing components to implement an abstract idea as noted previously, when determining the creditworthiness of an applicant (*see* Figs. 3, 4A–B) or the risk value for a proposed trade (*see* Figs. 5A–E).³

The record supports the Examiner’s finding that the additional elements — a processor and a memory — are well-understood, routine, conventional, and specified at a high level of generality. Revised Guidance, 84 Fed. Reg. at 56. There is no technical description of the “processor” in the disclosure, other than to indicate the processor may reside in

a personal computer, workstation, network computer, wireless data port, wireless telephone, personal digital assistant (PDA), [or] cellular telephone.

(Spec. 10:16–18.) The disclosure further indicates that the “memory”

may take the form of volatile or non-volatile memory including, without limitation, magnetic media, optical media, random access memory (RAM), read-only memory (ROM), removable media, or any other suitable local or remote memory component.

(Spec. 14:8–10.) Nothing regarding any aspect of the “ordered combination” of the claim elements provide significantly more than the abstract idea that claim 1 is directed to.

³ With respect to the determination of the risk value for a proposed trade, the disclosure does not indicate a technical benefit, but instead states that “such risk values [] may allow the user to place more trading orders [] than would otherwise be allowed, ***resulting in increased liquidity and thus increased profits for [the] trading platform.***” (Spec. 18:2–4, emphasis added.)

Accordingly, we sustain the Examiner's 35 U.S.C. § 101 rejection of claim 1. Appellant provides no arguments that would differentiate the remaining claims from claim 1. Thus, the foregoing analysis of claim 1 is exemplary of that for independent claim 12 and dependent claims 2–8, 10, 11, and 13–19. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016). Therefore, we also sustain the Examiner's 35 U.S.C. § 101 rejection of those claims.

CONCLUSION

For the reasons stated above, we affirm the Examiner's non-statutory subject matter rejection of claims 1–8 and 10–19.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–8, 10–19	101	non-statutory subject matter	1–8, 10–19	

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)(1)(iv).

AFFIRMED