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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIC ROCK

Appeal 2019-002190
Application 14/223,815
Technology Center 3600

Before ERIC S. FRAHM, JASON J. CHUNG, and JOYCE CRAIG, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals the Final Rejection of claims 1–9, 11–19, and 21–29.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

INVENTION

The invention relates to integrating multimedia audio/video sources for presentation to a user on mobile and non-mobile devices. Spec. 4:10–11. Claim 1 is illustrative of the invention and is reproduced below:

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. According to Appellant, Vivify Health, Inc. is the real party in interest. Br. 3.

[2] Claims 10, 20, and 30 are cancelled. Br. 20, 22, 25.

l. A dynamic video scripting system comprising:

(a) host computer system (HSC);

(b) mobile user device (MUD);

(c) computer communication network (CCN); and

(d) operator interface computer (OIC);

wherein

said HCS is configured with a graphical user interface (GUI) operable to accept commands by said RCS to define a video script network (VSN) on said GUI;

said VSN comprises an interconnected network of GUI scripting icons (GSIs) selected from a group consisting of: audio/video content (AVC), decision-based content (DBC), user query/response (UQR), and asynchronous event trigger (AET);

said HCS is configured to *translate said VSN into a video script dataset (VSD) describing the interconnection and function of said GSIs, wherein the VSD references data retrieved from a media database (MDB) and the VSN describes sequencing of multimedia content retrieved from the MDB and interaction of the multimedia content with a user, wherein the VSN further permits internal video threads within the VSD to perform additional operations associated with the user and displayed video without interaction from the user*;

said HCS is configured to transmit said VSD to said MUD over said CCN;

said MUD is configured to execute a mobile scripting engine (MSE) operating under control of said MUD, wherein the MSE *interprets the VSD* and retrieves the multimedia content from the MDB for presentation to the user on the MUD;

said MSE is configured to execute said VSD to control the display and input functions of said MUD;

said MSE is configured to implement a user interface context (UIC) on said MUD that dynamically presents a display on said MUD and accepts input from said MUD based on execution of said VSD by said MSE, wherein the UIC defines integration of the multimedia content on the MUD; and

said UIC is triggered for activation by a patient healthcare plan (PHP) executing within the context of said MUD, wherein the PHP is configurable from the OIC and comprises additional GSIs for translation and incorporation into the VSD, wherein the

> additional GS Is coordinate presentation of user input and output functions of the MUD to provide an integrated user input/output data collection and display.

Appeal Br. 18–19 (Claims Appendix) (emphases added).

REJECTION

Claims 1–9, 11–19, and 21–29 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Non-Final Act. 2–11.

ANALYSIS

Claims 1–9, 11–19, and 21–29 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 PTO recently 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* 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 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 Memorandum.

B. 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 1–3) do not recite mathematical concepts or certain methods of organizing human activities. The closest grouping of abstract idea that the emphasized portions of claim 1 falls into is "concepts performed in the human mind."

Claim 1 (reproduced above at *supra* 1–3) does not recite mathematical concepts, because there are no mathematical relationships, formulas, equations, or calculations analyzed or performed in the claim. Claim 1 also does not recite mental processes, because the limitations "translat[ing] said VSN into a video script dataset (VSD) describing the interconnection and function of said GSIs, wherein the VSD references data retrieved from a media database (MDB) and the VSN describes sequencing of multimedia content retrieved from the MDB and interaction of the multimedia content with a user, wherein the VSN further permits internal video threads within the VSD to perform additional operations associated with the user and displayed video without interaction from the user" and "interpret[ing] the VSD" is not something that can be practically performed in the human mind—this operation exists exclusively in the realm of computers. Finally, claim 1 does not recite any of the methods of organizing human activity

identified in the Revised Guidance. That is, claim 1 relates to performing a comparison operation by a file system application, not fundamental economic principles or practices, commercial or legal interactions, or managing personal behavior or relationships or interactions between people. *See* Revised Guidance. Accordingly, we determine claim 1 does not recite an abstract idea because none of the limitations fall within the enumerated categories of abstract ideas under the Revised Guidance.

Independent claims 11 and 21 recite similar features as independent claim 1. Accordingly, we do not sustain the Examiner's rejection of: (1) independent claims 1, 11, and 21; and (2) dependent claims 2–9, 12–19, and 22–29 under 35 U.S.C. § 101.

Because the present claims do not recite an abstract idea, we need not proceed to step 2A, prong 2. Rather, our analysis ends here.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–9, 11–19, 21–29	101	Eligibility		1–9, 11–19, 21–29

REVERSED