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RYAN, MASON & LEWIS, LLP
48 South Service Road
Suite 100
Melville, NY 11747

EXAMINER
SENSENIG, SHAUN D

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN J. WEISS and JAMES J. FALLON

Appeal 2018-002270
Application 14/642,292
Technology Center 3600

Before JOHN A. EVANS, CATHERINE SHIANG, and MICHAEL T. CYGAN, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–5, 7–16, and 18–20, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

[1] We use "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies C-Scape Consulting Corporation as the real party in interest. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

The present invention relates to "display of information and, more particularly, to systems and methods for providing automated notification and display of compliance issues and other announcements." Spec. ¶ 2.

> This is directed to systems and methods for Compliance and Announcement, Display and Notification providing a fast, efficient, and highly cost effective method of displaying compliance data and notifications. It is an object to address the limitations of conventional compliance techniques.

Spec. ¶ 26. Claim 1 is exemplary:

> 1. A computer implemented method comprising:
> deploying a labor law compliance information display and notification system on one or more computing nodes of a computer network of an employer, wherein the employer comprises a person or organization that employs individuals;
> executing one or more software modules of the labor law compliance information display and notification system on the one or more computing nodes to implement an automated process which automatically accesses and electronically displays labor law compliance information to enable the employer lo comply with labor laws, the automated process comprising:
> locating one or more electronic sources of labor law compliance information;
> automatically generating a list of computer links to one or more of the electronic sources based on predetermined criteria associated with the labor law compliance information;
> downloading over a network, utilizing the generated list of links, labor law compliance information comprising data posting and notification requirements for a physical location of employees of the employer,

wherein the labor law compliance information comprises information the employer is required to publicly post in said physical. location in compliance with governmental regulatory requirements;

selecting, automatically, at least a portion of the labor law compliance information based on the data posting and notification requirements and said physical location;

displaying, on an electronic display in said physical location, the selected portion of the labor law compliance information;

automatically determining if the labor law compliance information associated with a generated link has been updated;

downloading the updated labor law compliance information; and

replacing, on the electronic display in said physical location, at least a portion of the currently displayed labor law compliance information with the updated labor law compliance information,

wherein the automated process is performed by executing the one or more software modules using one or more processors.

References and Rejections[2]

Claims Rejected	35 U.S.C. §	References
1–5, 7–16, 18–20	101	not applicable

[2] Throughout this opinion, we refer to the (1) Final Office Action dated June 5, 2017 ("Final Act."); (2) Appeal Brief dated July 5, 2018 ("Appeal Br."); (3) Examiner's Answer dated November 19, 2018 ("Ans."); and (4) Reply Brief dated January 22, 2019 ("Reply Br.").

1, 2, 3, 7, 10, 20	103	OSHA (retrieved from the wayback machine as of 4/5/2008), LaborLawPoster (retrieved from the wayback machine as of 2/6/2007), Bokish (US 7,269,417 B1; September 11, 2007)
4, 5, 11, 12, 14	103	OSHA, LaborLawPoster, Bokish, Official Notice
8	103	OSHA, LaborLawPoster, Bokish, Middelfart (US 2003/0229622 A1; December 11, 2003)
9	103	OSHA, LaborLawPoster, Bokish
13	103	OSHA, LaborLawPoster, Bokish, Knight (US 2006/0004584 A1; January 5, 2006)
15, 18	103	OSHA, LaborLawPoster, Bokish, Schoemann (US 2003/0144989 A1; July 31, 2003)
16	103	OSHA, LaborLawPoster, Bokish, Schoemann, Official Notice
19	103	OSHA, LaborLawPoster, Bokish, Schoemann, Gross (US 2004/0143569 A1; July 22, 2004)

ANALYSIS

35 U.S.C. § 101

We disagree with Appellant's arguments. To the extent consistent with our analysis below, we adopt the Examiner's findings and conclusions in (i) the action from which this appeal is taken and (ii) the Answer.

Section 101 of the Patent Act provides "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may

obtain a patent therefor, subject to the conditions and requirements of this title." 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. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014) (internal 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 182 n.7 (quoting *Corning v. Burden*, 56 U.S.

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 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.*, *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 (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.* (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 United States Patent and 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").[3] Under the 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) (Step 2A, Prong 1); 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, 2018) (Step 2A, Prong 2).

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. (Step 2B.)

See Guidance, 84 Fed. Reg. at 54–56.

Turning to Step 2A, Prong 1 of the Guidance, claim 1 (with emphases) recites:

> 1. A computer implemented method comprising:
> *deploying a labor law compliance information display and notification system on* one or more computing nodes of a computer network *of an employer, wherein the employer comprises a person or organization that employs individuals;*

[3] The Guidance was updated in October 2019.

executing one or more software *modules of the labor law compliance information display and notification system on* the one or more computing nodes *to implement an* automated *process which* automatically *accesses and* electronically *displays labor law compliance information to enable the employer lo comply with labor laws, the* automated *process comprising:*

locating one or more electronic *sources of labor law compliance information;*

automatically *generating a list of* computer *links to one or more of the* electronic *sources based on predetermined criteria associated with the labor law compliance information;*

downloading over a network, *utilizing the generated list of links, labor law compliance information comprising data posting and notification requirements for a physical location of employees of the employer, wherein the labor law compliance information comprises information the employer is required to publicly post in said physical location in compliance with governmental regulatory requirements;*

selecting, automatically, *at least a portion of the labor law compliance information based on the data posting and notification requirements and said physical location;*

displaying, on an electronic display *in said physical location, the selected portion of the labor law compliance information;*

automatically *determining if the labor law compliance information associated with a generated link has been updated;*

downloading the updated labor law compliance information; and

replacing, on the electronic display *in said physical location, at least a portion of the currently displayed labor law compliance information with the updated labor law compliance information,*

wherein the automated process is performed by executing the one or more software modules using one or more processors.[4]

[4] We select claim 1 as the representative claim, and group the remaining claims accordingly under 37 C.F.R. 41.37(c)(1)(iv) ("[T]he failure of

All of the italicized limitations are associated with following rules. For example, "deploying a labor law compliance information display and notification system on . . . of an employer, wherein the employer comprises a person or organization that employs individuals" facilitates following rules by implementing the compliance information system. Likewise, "executing one or more . . . modules of the labor law compliance information display and notification system on . . . to implement a[] . . . process which . . . accesses and . . . displays labor law compliance information to enable the employer lo comply with labor laws" enables following rules by providing access to information. Similarly, "locating one or more . . . sources of labor law compliance information," "generating a list of . . . links to one or more of the . . . sources based on predetermined criteria associated with the labor law compliance information," and "downloading . . . utilizing the generated list of links, labor law compliance information comprising data posting and notification requirements for a physical location of employees of the employer, wherein the labor law compliance information comprises information the employer is required to publicly post in said physical. location in compliance with governmental regulatory requirements" facilitate following rules by locating and obtaining compliance information. Further, "selecting . . . at least a portion of the labor law compliance information based on the data posting and notification requirements and said

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appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of each grouped claim separately.").

physical location" and "displaying, on . . . in said physical location, the selected portion of the labor law compliance information" facilitate following rules by displaying the relevant compliance information. In addition, "determining if the labor law compliance information associated with a generated link has been updated," "downloading the updated labor law compliance information; and "replacing, on . . . in said physical location, at least a portion of the currently displayed labor law compliance information with the updated labor law compliance information" facilitate following rules by providing updated compliance information.

Our determination is supported by the Specification, which describes the need to follow labor laws, and a new method to fulfill that need:

> Labor laws have been enacted in nearly all countries of the world. . . . .

Spec. ¶ 3.

> Non-compliance to posting up-to-date information can bring a wide variety of penalties including: citations, fines, civil monetary penalties and damages, and loss of government contracts, dependent upon the employer, state, and nature of the offense. Multiple violations may incur incrementally larger penalties.

Spec. ¶ 8.

> This is directed to systems and methods for Compliance and Announcement, Display and Notification providing a fast, efficient, and highly cost effective method of displaying compliance data and notifications. It is an object to address the limitations of conventional compliance techniques.

Spec. ¶ 26.

Because following rules belongs to the category of managing relationships or interactions between people (Guidance, Step 2A, Prong 1 (Groupings of Abstract Ideas)), we conclude claim 1 recites

managing relationships or interactions between people, which is one certain methods of organizing human activity identified in the Guidance, and thus an abstract idea.

Turning to Step 2A, Prong 2 of the Guidance, contrary to Appellant's assertions (Appeal Br. 13–15; Reply Br. 2–6), Appellant has not shown claim 1 recites additional elements that integrate the judicial exception into a practical application. In particular, Appellant has not shown the additional elements "one or more computing nodes of a computer network, "software," "automated," "automatically," "electronically," "electronic," "a network," "electronic display," and "the automated process is performed by executing the one or more software modules using one or more processors" integrate the judicial exception into a practical application.

Appellant's argument about "novel . . . solutions" to "enable an employer to comply with labor laws" (Appeal Br. 13; Reply Br. 5) is unpersuasive because "a claim for a *new* abstract idea is still an abstract idea." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). "[U]nder the *Mayo*/*Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility . . . ." *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (citations omitted). Contrary to Appellant's arguments, claim 1 is directed to an abstract idea—not "technological improvements," as Appellant asserts (Appeal Br. 13).

Appellant's reliance on *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) (Appeal Br. 14–15) is unpersuasive. In

McRO, the Court determines:

> Claim 1 of the '576 patent is focused on *a specific asserted improvement in computer animation*, i.e., the automatic use of rules of a particular type. . . . It is the incorporation of the claimed rules, not the use of the computer, that "improved [the] existing technological process" by allowing the automation of further tasks.
>
> Further, the automation goes beyond merely "organizing [existing] information into a new form" or carrying out a fundamental economic practice. . . . *The claimed process uses a combined order of specific rules that renders information into a specific format that is then used and applied to create desired results: a sequence of synchronized, animated characters*.

McRO, 837 F.3d at 1314–15 (emphases added).

Unlike the claims of *McRO*, claim 1 is not directed to "a specific asserted improvement in computer animation" or similar improvements. *Id.* at 1314. Nor is claim 1 directed to using "a combined order of specific rules that renders information into a specific format that is then used and applied to create desired results: a sequence of synchronized, animated characters" or similar functions. *Id.* at 1315. Therefore, *BASCOM* is inapplicable here.

Further, Appellant's assertion regarding pre-emption (Reply Br. 5–6) is unpersuasive, because

> [w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate 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); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("that the claims do not preempt all price optimization or

may be limited to price optimization in the e-commerce setting do not make them any less abstract").

Regarding the "improvements over . . . manual searching and accessing of . . . information" and "automated process" argued by Appellant (Appeal Br. 13; Reply Br. 5-6), our reviewing court has declared:

> While the claimed system and method certainly *purport to accelerate the process of analyzing* audit log *data, the speed increase comes from the capabilities of a general-purpose computer, rather than the patented method itself. See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 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.").

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1095 (Fed. Cir. 2016) (emphases added).

Applying this reasoning to claim 1, we similarly find any purported "improvement" comes from the capabilities of general-purpose computers (such as the recited "computing nodes of a computer network, "software," "network," "electronic display"), rather than the claimed steps or functions. Similar to the claims of *FairWarning*, claim 1 is "not directed to an improvement in the way computers operate" and "the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools." *FairWarning*, 839 F.3d at 1095.

As a result, we conclude claim 1 does not recite additional elements that integrate the judicial exception into a practical application. *See* Guidance, Step 2A, Prong 2.

Turning to Step 2B of the Guidance, Appellant does not persuasively

argue any specific limitation is not well-understood, routine, or conventional in the field. Nor does Appellant persuasively argue the Examiner erred in that aspect. In particular, Appellant's argument about "specific types of information" (Appeal Br. 15) is unpersuasive, because Appellant has not persuasively explained why processing known compliance information renders the claims patent eligible under *Alice*.[5]

Further, Appellant's argument about the strength of the prior art rejections (Appeal Br. 15) is unpersuasive, because a prior art rejection is determined under 35 U.S.C. § 102 and § 103, which are different statutory requirements. As the Supreme Court emphasizes: "[t]he '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." *Diehr*, 450 U.S. at 188–89 (emphasis added). Our reviewing court further guides that "[e]ligibility and novelty are separate inquiries." *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017).

As a result, Appellant has not persuaded us the Examiner erred with respect to the Guidance's Step 2B analysis. *See* Guidance, Step 2B.

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 101.

For similar reasons, we also sustain the Examiner's rejection of corresponding dependent claims 2–5, 7–16, and 18–20 under 35 U.S.C. § 101, as Appellant does not advance separate substantive arguments about

[5] Appellant also cites "specific functions" (Appeal Br. 15), but does not persuasively explain why they are not well-understood, routine, or conventional in the field.

those claims.

Obviousness

We have reviewed the Examiner's rejection in light of Appellant's contentions and the evidence of record. We concur with Appellant's contentions that the Examiner's obviousness rejections are deficient. *See* Appeal Br. 15–22; Reply Br. 8–9. In particular, we agree with Appellant that the Examiner has not adequately mapped the following limitations, as the Examiner has not provided specific findings about the limitations (Appeal Br. 15–22; Reply Br. 8–9):

> automatically determining if the labor law compliance information associated with a generated link has been updated;
>
> downloading the updated labor law compliance information; and
>
> replacing, on the electronic display in said physical location, at least a portion of the currently displayed labor law compliance information with the updated labor law compliance information,

as recited in independent claim 1.

> determining an effective date of the downloaded labor law compliance information; and
>
> withholding from displaying the labor law compliance information on the electronic display in said physical location until a specific date, wherein the specific date is determined based on the effective date of the received labor law compliance information,

as recited in independent claim 9.

> storing the selected portion of the downloaded labor law compliance information in an information database, wherein storing the selected portion of the downloaded labor law compliance information comprises:
>
> identifying a portion of the downloaded labor law compliance information that is currently valid, wherein

> the remaining received labor law compliance information is not currently valid; and
>
> storing only the currently valid labor law compliance information in the information database,

as recited in independent claim 15.

> downloading, utilizing the generated list of links, labor law compliance information associated *with a plurality of different physical locations of employees of the employer*, wherein the labor law compliance information comprises information the employer is required to publicly post in the plurality of different physical locations in compliance with governmental regulatory requirements,

as recited in independent claim 20 (emphasis added).

Because the Examiner fails to provide sufficient evidence or explanation to support the rejections, we are constrained by the record to reverse the Examiner's rejection of independent claims 1, 9, 15, and 20.

We also reverse the Examiner's rejection of corresponding dependent claims 2–5, 7, 8, 10–14, 16, 18, and 19. Although the Examiner cites additional references for rejecting some dependent claims, the Examiner has not shown the additional references overcomes the deficiency discussed above in the rejection of independent claims 1, 9, 15, and 20.

CONCLUSION

We affirm the Examiner's decision rejecting claims 1–5, 7–16, and 18–20 under 35 U.S.C. § 101.

We reverse the Examiner's decision rejecting claims 1–5, 7–16, and 18–20 under 35 U.S.C. § 103.

Because we affirm at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner's decision rejecting claims 1–5, 7–16, and 18–20. *See* 37 C.F.R. § 41.50(a)(1).

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 7–16, 18–20	101	Subject Matter Eligibility	1–5, 7–16, 18–20	
1, 2, 3, 7, 10, 20	103	OSHA, LaborLawPoster, Bokish		1, 2, 3, 7, 10, 20
4, 5, 11, 12, 14	103	OSHA, LaborLawPoster, Bokish, Official Notice		4, 5, 11, 12, 14
8	103	OSHA, LaborLawPoster, Bokish, Middelfart		8
9	103	OSHA, LaborLawPoster, Bokish		9
13	103	OSHA, LaborLawPoster, Bokish, Knight		13
15, 18	103	OSHA, LaborLawPoster, Bokish, Schoemann		15, 18
16	103	OSHA, LaborLawPoster, Bokish,		16

		Schoemann, Official Notice		
19	103	OSHA, LaborLawPoster, Bokish, Schoemann, Gross		19
Overall Outcome			1–5, 7–16, 18–20	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED