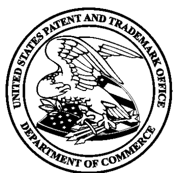

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CIRRUS SHAKERI, HARTMUT VOGLER, PUNTIS JIFROODIAN-HAGHIGHI, and YVONNE BAUR

Appeal 2019-002955
Application 14/586,513
Technology Center 2100

Before CARL W. WHITEHEAD JR., ADAM J. PYONIN, and MELISSA A. HAAPALA, *Administrative Patent Judges.*

PYONIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[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 SUCCESSFACTORS, INC. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

The Application is directed to a "computer automated learning system for individuals in an organization" used to "get more employees to enroll in and finish trainings that will help them do their job better to help every employee stay competitive in the market." Spec. ¶ 6, 34. Claims 1–8 and 10–20 are pending; claims 1, 14, and 20 are independent. Appeal Br. 18–23. Claim 14 is reproduced below for reference (with added limitation lettering and some formatting):

> 14. A computer system comprising: [a] a processor; and [b] a non-transitory computer readable medium having stored thereon one or more programs, which when executed by the processor, causes the processor to:
>
> [c] store data in a learning graph, the learning graph comprising nodes and edges,
>
> [c-1] wherein a plurality of content nodes represent learning content, a plurality of person nodes represent individuals, and a plurality of learning strategy nodes comprise strategy algorithms for traversing nodes and edges of the learning graph to identify content, and wherein edges between nodes comprise association types defining particular relationships between particular nodes,
>
> [c-2] wherein a first edge between a particular content node and a particular person node establishes a first association type, the first edge indicating that learning content corresponding to the particular content node has been consumed by an individual corresponding to the particular person node, and wherein a second edge between at least one person node and a learning strategy node has a preference association type;
>
> [d] retrieve at least one strategy algorithm from at least one learning strategy node in the learning graph in response to a user request from a user corresponding to a first person node in the learning graph,

[d-1] wherein the first person node and the at least one learning strategy node are coupled together by an edge having said preferred association type;

[e] determine association types for edges between the first person node and other person nodes in response to the user request map parameters about the user to person nodes to determine associations between the user and other nodes in response to the user request;

[f] adaptively determine whether the other person nodes are to be included in the execution of the at least one strategy algorithm based at least on parameters stored in the at least one learning strategy node and the first person node;

[g] exclude other person nodes from execution of the at least one strategy algorithm based on the determination; and

[h] execute the at least one strategy algorithm on the first person node and the included other person nodes.

The Examiner's Rejection

Claims 1–8 and 10–20 are rejected under 35 U.S.C. § 101 as being directed to non–statutory subject matter. Final Act. 2–5.

ANALYSIS

We have reviewed the Examiner's rejection 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 determines the claims are patent ineligible under 35 U.S.C. § 101, because the claims "do not amount to significantly more than an abstract idea." Final Act. 2; *see Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217–218 (2014) (describing the two-step framework "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.").

Prior to the filing of Appellant's Reply Brief—but after the filing of the Appeal Brief and mailing of the Final Action and Examiner's Answer– the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101 ("Guidance").[2] *See* 2019 Revised Patent Subject Matter Eligibility Guidance Notice, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Notice"); *see also* USPTO, October 2019 Update: Subject Matter Eligibility ("October Update") at 17 (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf). "All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance." Notice, 84 Fed. Reg. at 51; *see also* October Update at 1.

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 One"); and
>
> (2) additional elements that integrate the judicial exception into a practical application (see MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) ("Step 2A, Prong Two").

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[2] Appellant contends "the present Appeal is rendered moot under the 2019 Revised Patent Subject Matter Eligibility Guidance." Reply Br. 2. The Guidance, however, merely "sets out agency policy with respect to the USPTO's interpretation of the subject matter eligibility requirements of 35 U.S.C. § 101 in view of decisions by the Supreme Court and the Federal Circuit." Notice, 84 Fed. Reg. at 51. Thus, the Examiner's eligibility rejection is properly before us on appeal. *See* October Update at 17 ("It is the rejection under § 101, and not any alleged failure to comply with the 2019 [Guidance], that is reviewed by the Patent Trial and Appeal Board.").

Notice, 84 Fed. Reg. at 52–55. 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, under Step 2B, 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.

Notice, 84 Fed. Reg. at 52–56.

A. Step 2A, Prong One

The Examiner determines the claims recite "retrieving strategy algorithms from a learning graph with nodes based on a user request," which is similar to concepts found to be abstract. Final Act. 3 (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1356 (Fed. Cir. 2016), 4.

We determine claim 14 includes limitations that recite abstract concepts under the Guidance. Limitations [c] and [d] recite storing and retrieving information. Sub-limitations [c-1], [c-2], and [d-1] specify the type of information (relating to information on individuals and learning). Thus, these limitations are steps of observation and evaluation, which are examples of mental processes that can be performed in a person's mind or with pen and paper, pursuant to the Guidance. *See* Notice, 84 Fed. Reg. at 52. Limitations [e], [f], and [g] determine connections and strategies based on the information, and are steps of evaluation, judgment, opinion; these are examples of mental processes that can be performed in a person's mind or with pen and paper, pursuant to the Guidance. *See id.* Limitation [h]

performs a strategy algorithm based on the determinations, and is similarly a step of evaluation, judgment, opinion; it is an example of mental processes that can be performed in a person's mind or with pen and paper, pursuant to the Guidance. *See id.*

Pursuant to the Guidance, we conclude that the claim recites a judicial exception (a mental process). *See* Ans. 14, 15; Notice, 84 Fed. Reg. at 54; October Update at 7, 8. Such analysis accords with our case law. *See Elec. Power Grp.*, 830 F.3d at 1354–55 (finding a claim directed to the abstract idea of "collecting information, analyzing it, and displaying certain results" to be ineligible); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) ("The focus of the claims, as reflected in what is quoted above, is on selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis. That is all abstract."); *Ubisoft Entm't, S.A. v. Yousician Oy*, No. 2019-2399, 2020 WL 3096369, at *3 (Fed. Cir. June 11, 2020) ("the claims recite nothing more than a process of gathering, analyzing, and displaying certain results. For example, the specification describes the generation of 'mini-games' as. . . . no different from the ordinary mental processes of a guitar instructor teaching a student how to play the guitar").

As we determine that independent claim 14 recites a judicial exception under Prong One of the Guidance, we continue our analysis under Prong Two. *See* Notice, 84 Fed. Reg. at 54; October Update at 10.

B. Step 2A, Prong Two

Appellant contends the claims are patent eligible, because "the claimed invention is a way to achieve computationally efficient and highly

customized results for particular users." Appeal Br. 12. According to Appellant, "the specification supports the claimed invention being a technical improvement in computer capabilities," as the "specification clearly states that the claimed invention deviates from a simplistic, relational model in favor of the claimed dynamic learning graph to achieve customized results." *Id*. at 13, 14.

Claim 14 recites limitations [a] ("a processor"), and [b] ("a non-transitory computer readable medium having stored thereon one or more programs . . . executed by the processor"). Pursuant to the Guidance, these are additional elements beyond the recited judicial exception. *See* Notice, 84 Fed. Reg. at 54, 55; Final Act. 5; Ans. 10, 22. We disagree with Appellant's contentions that the recited additional elements remove the claims from the realm of ineligible subject matter. *See* Appeal Br. 12. Rather, these elements do "not impose any meaningful limit on the computer implementation of the abstract idea." Ans. 10. The claim confines the recited abstract idea to a processor, which "merely uses a computer as a tool to perform an abstract idea." Notice, 84 Fed. Reg. at 55; Ans. 16; *see also Univ. of Fla. Research Found., Inc. v. Gen. Elec. Co*., 916 F.3d 1363, 1367 (Fed. Cir. 2019) ("On its face, the '251 patent seeks to automate 'pen and paper methodologies' to conserve human resources and minimize errors. This is a quintessential 'do it on a computer' patent.").

Furthermore, we are not persuaded the Examiner errs in determining that "[t]here is no indication that the combination of elements improves the functioning of a computer or improves another technology." Ans. 15 (emphasis omitted). Appellant's arguments regarding computational efficiency (*see, e.g*., Appeal Br. 13) are conclusory. Similarly, the

Specification provides, at most, an assertion of efficiency without sufficiently detailing what is being made more efficient or how the efficiency is achieved. *See, e.g.*, Spec. ¶ 36;[3] Ans. 20 ("Appellant did not disclose in the specification any improvement related to the functioning of a computer or the organization of a logical structure in software to improve computer capacity."). Thus, these arguments do not persuade us the Examiner's analysis is in error. *See* October Update at 12 ("[F]irst the specification should be evaluated to determine if the disclosure provides sufficient details such that one of ordinary skill in the art would recognize the claimed invention as providing an improvement."), 13 ("If the examiner concludes the disclosed invention does not improve technology, the burden shifts to applicant to provide persuasive arguments supported by any necessary evidence to demonstrate that one of ordinary skill in the art would understand that the disclosed invention improves technology"); Ans. 9, 10.

Based on the record before us, we determine the claim recites a judicial exception and fails to integrate the exception into a practical application, therefore, the claim is "directed to the . . . judicial exception." Notice, 84 Fed. Reg. at 54.

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[3] Rather than showing a technical benefit, the invention—as described in the Specification—may save a corporation effort and money when training its workforce. *See* Spec. ¶ 37 ("Embodiments of the present disclosure may help organizations be better equipped for rapid changes in the environment by keeping an agile workforce of lifelong learning."); ¶ 44 ("Learning paths, which may represent a sequence of consumption for learning content, may be dynamic and customized for different users based on each user's learning history.").

C. Step 2B

Appellant contends the "Examiner erroneously failed to apply step-two of the two-step Alice test," as "[n]o . . . finding of fact has been made." Appeal Br. 16 (certain capitalization and underlining omitted), 17.

We are not persuaded the Examiner errs. The Examiner determines that the additional elements recited by independent claim 14—individually and in combination—are well understood, routine, and conventional. *See* Ans. 22. We find the Examiner's determination to be reasonable, in view of the record before us. *See* Spec. ¶¶ 2–5, 35, 135–137; *Alice*, 573 U.S. at 226 ("Nearly every computer will include a 'communications controller' and 'data storage unit' capable of performing the basic calculation, storage, and transmission functions required by the method claims."). In response, Appellant has not identified additional elements that amount to significantly more than the judicial exception. *See* Appeal Br. 15–17; Notice, 84 Fed. Reg. at 55–56. Thus, we determine the claim limitations, individually and as an ordered combination, do not provide significantly more than the recited judicial exception.

We are not persuaded the Examiner errs in determining independent claim 14 is patent ineligible. We sustain the Examiner's eligibility rejection.

CONCLUSION

We are not persuaded the Examiner errs in finding independent claim 14 to be patent ineligible. Independent claims 1 and 20 recite similar limitations, which we determine are ineligible for the same reasons. Appellant does not present separate substantive arguments for the dependent claims. Thus, we sustain the Examiner's rejection under 35 U.S.C. § 101.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–8, 10–20	101	Eligibility	1–8, 10–20	

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