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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KUNAL SURI and ADRIAN C. MOS

Appeal 2019-003076
Application 14/560,293
Technology Center 3600

Before MAHSHID D. SAADAT, KRISTEN L. DROESCH, and
BETH Z. SHAW, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–23, which constitute all the claims pending in this application. We have jurisdiction 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(a). Appellant identifies the real party in interest as Conduent Business Services, LLC. Appeal Br. 1.

STATEMENT OF CASE

Introduction

Appellant's Specification is directed to "a computer-implemented business process monitoring system," which "monitors the human-centric business processes involving human activities along with integration-centric BPs [(business processes)] involving SOAs [(Service Oriented Architectures)]." *See* Spec. ¶¶ 7, 9.

Exemplary claim 1 under appeal reads as follows;

1. A computer-implemented business process monitoring system comprising:

a network which links a main computing device to a first remote computing device, a second remote computing device and a third remote computing device, the first remote computing device providing access to a business process modeling suite which implements a business process description by running a business process, the second remote computing device providing access to a computer-implemented service oriented architecture including services that execute the business process; the third remote computing device providing access to a human task monitoring and contextual analysis component (HTMCA) which monitors manual activities;

the main computing device comprising:

memory which stores a set of concept probes, each of the concept probes being communicatively connected to a monitoring component of the business process management suite and also being communicatively connected to the monitoring component of the service oriented architecture which monitors the set of services of the service oriented architecture and also being communicatively connected to the HTMCA which monitors manual activities associated with business activity, each connection of each concept probe being based on at least one mapping to the respective monitoring component of the business process

management suite and the service oriented architecture and the HTMCA, each mapping adapted to determine (a) a set of business concepts, (b) a set of executable services for each business concept, (c) a set of activities for each of a business process implemented by the business process management suite, with each activity corresponding to a business concept in the set of business concepts, (d) a set of activities and corresponding business concepts for every business process implemented by the business process management suite, and (e) a set of manual tasks called on by the BPM infrastructure for execution of the business process activity and each concept probe corresponding to a manual task;

the concept probe matching a business concept to the at least one activity and the at least one manual task based on the respective at least on mapping, the concept probe acquiring activity information from the monitoring component of the business process management suite about the respective at least one activity, and acquiring manual task information from the monitoring component of the HTMCA that is called by the at least one activity, the concept probe aggregating the activity information and the manual task information into monitoring information matching the business concept, and outputting the monitoring information; and

a processor which implements that set of concept probes,

wherein in response to receiving the manual task information from the BPM infrastructure, and wherein in response to receiving activity information acquired from the associated second probe, the each concept probe correlates the manual task information with the activity; and,

wherein the each concept probe generates monitoring information based on the correlated data.

Rejection on Appeal

Claims 1–23 stand rejected under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. *See* Final Act. 2–5.

ANALYSIS

“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review de novo.” *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010). 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). Appellant does not separately argue the claims. *See* Appeal Br. 10–15. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner determines that “the claimed invention describes the abstract concept of monitoring business processes and manual tasks” wherein “monitoring is accomplished using a set of probes (i.e., surveys, queries, etc.) that are stored in an organized fashion that tracks and correlates automated and manual activities to an associated business concept.” Final Act. 3. The Examiner finds the recited process in both independent claims 1 and 7 are similar to the concepts held to be abstract in *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016). Final Act. 3–4. The Examiner also finds that the claims do not “recite elements that amount to significantly more than the judicial exception” because:

The claims recite a network that links a main computing device to a first remote computing device, a second remote computing device and a third remote computing device, the first remote

computing device. Additionally, a processor and a memory are cited in the claims. In each case, *the elements are recited in a manner that is well-understood, routine and conventional. The devices are general-purpose devices to perform generic computer functions*, i.e., accessing memory, receiving and storing data, processing to transform some data, and outputting data. Additionally, the claims recite that the first remote computer provides access to a business process monitoring suite, the second remote computing device provides access to a computer-implemented service oriented architecture including services that execute the business process and the third remote computer provides access to a human task monitoring and contextual analysis component (HTMCA).

Final Act. 4 (emphasis added). The Examiner points to paragraphs 4, 7, 34, and 35 of Appellant's Specification to support the above determination with respect to "conventional computing elements" in combination with "other well-known technological business practices such as using business process management suite software." Final Act. 4–5.

After the mailing of the Final Action and the filing of the Appeal Brief in this case, in January 2019, the USPTO published revised guidance on the application of § 101. *See* USPTO's 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under that guidance ("Step 2A"), the office first looks to whether the claim recites:

- (1) Prong One: 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) Prong Two: 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, Jan. 2018)).

Only if a claim (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then (pursuant to the Guidance “Step 2B”) look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not well-understood, routine, and conventional in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance, 84 Fed. Reg. 56.

We are not persuaded the Examiner’s rejection is in error. We adopt the Examiner’s findings and conclusions as our own, to the extent consistent with our analysis herein. We add the following primarily for emphasis and clarification with respect to the Guidance.

I. Step 2A

Appellant argues, unlike the claims in *FairWarning*, “the claims are directed to a specialized computer monitoring system architected in such a way to perform a specialized task” or “a claimed architecture—that enables a computer system to improve execution of the operation of ‘collecting’—is distinct from the step or act of collecting itself.” Appeal Br. 10. Appellant specifically asserts the claims, which are “directed to the function of the computer system, and how the mapping is performed across the various components” are more similar to the claims in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016). Appeal Br. 10–12.

We are not persuaded of Examiner error.

Prong One

Pursuant to the Guidance, we agree with the Examiner that claim 1 recites a method for human task monitoring and analyzing manual activities which “describes the abstract concept of monitoring business processes and manual tasks.” Final Act. 3. These functions relate to “commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations)” and “managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions),” which are considered “certain methods of organizing human activity.” *See* Spec. ¶¶ 21–23; *see also* Guidance, Section III (A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception), 84 Fed. Reg. at 52. Specifically, claim 1 recites steps of “stores a set of concept probes, each of the concept probes being communicatively connected to a monitoring component of the business process management suite” for determining sets of business concepts, service, activities, and manual tasks, “matching a business concept to the at least one activity,” and correlating manual tasks information with activities. *See* Appeal Br. 17–19 (Claim App.). These limitations are classified by the Guidance as steps of “sales activities or behaviors[,] business relations[,] . . . and following rules or instructions,” which are “fundamental economic principles or practices,” “commercial or legal interactions,” and “managing personal behavior or relationships or interactions between people.” Guidance, 84 Fed. Reg. at 52. Pursuant to the Guidance, such limitations are the abstract concept of “[c]ertain methods of organizing human activity.” *Id.*

As for monitoring manual activities, mapping the concept probes to monitoring components, matching a business concept to an activity, and correlating the manual task information with the activity, these limitations recite mental processes. *See* Guidance, 84 Fed. Reg. at 52, 53 (listing “[m]ental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion)” as one of the “enumerated groupings of abstract ideas” (footnote omitted)). The written description describes these limitations similar to the function of thinking and comparing in the human mind, *see, e.g.*, Spec. ¶¶ 10, 25, 26, 33–39, 43–49, but does not limit the claimed functions to a particular mathematical function or algorithm. These limitations are thus so broadly recited that they encompass people using functions that they can solve in their minds or using pen and paper to monitor manual tasks related to specific business processes. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (determining that a claim limitation “is so broadly worded” that the limitation “encompasses literally *any* method” for performing the limitation, including “even logical reasoning that can be performed entirely in the human mind”); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016).

Prong Two

Appellant contends that the claimed invention is described in the Specification as “a set of concept probes are communicatively connected to monitoring components of an associated business process management suite (BPMS) and associated service oriented architecture (SOA), with unique mappings to match activities and services to business concepts,” which allows for monitoring business processes and services using concept probes

that automatically correlate information. Appeal Br. 12. Appellant also argues “the invention sets out to improve the infrastructure of the BPMS monitoring system (computer system), which improves the performance of the BPMS monitoring system,” and further improves “the functioning of the computer itself, and/or the technological process.” Appeal Br. 12–13.

Appellant asserts “the claims improve a technological process by providing a quick, meaningful output instantly, which analogously rendered the claims patent eligible in *Trading Techs.*²” Appeal Br. 14.

We are not persuaded the Examiner’s rejection is in error pursuant to Step 2A, Prong Two of the Guidance. Appellant has not shown the claim includes additional elements that improve the underlying computer or other technology. Appellant explains:

The claimed system integrates a set of concept probes across a network of computing devices by including probes at a main computing device. Each probe is connected to a monitoring component (i.e., the claimed HTMCA) on a remote computing device that monitors manual activities associated with a business activity, and other monitoring components (BPMS, SOA and HTMCA) of different computing devices. The probe matches the business concept (called on by a BPMS), services (called on by the SOA), and manual tasks (called on by the HTMCA) for execution of a business process; aggregates and correlates the information; and generates an alert (cl. 5, 7) if the information indicates a violation.

Reply Br. 5–6. Although Appellant’s alleged improvement to technology is described as “the software and hardware configuration, whereby each concept probe communicates to the BPMS, SOA, HTMCA on different computing devices,” the additional functions merely involve comparing and

² *Trading Technologies Int’l, Inc. v. CGQ, Inc.*, No. 2016-1616 (Fed. Cir. January 18, 2017), slip op. at p. 8.).

matching concept probes with monitoring components of business activities. Reply Br. 6. In fact, paragraph 33 of Appellant’s Specification describes the relational aspect of different components and their functions at a high level that are performed by a different computerized system. *See* Spec. ¶¶ 33–34. However, “merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.” *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015). (Moreover, Appellant’s purportedly improved abstract concept, using “human task monitoring and contextual analysis component (HTMCA)” (Appeal Br. 13; Reply Br. 6), is still an abstract concept under the Guidance. *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (holding that “a claim for a new abstract idea is still an abstract idea”) (emphasis omitted). That is, monitoring and recognizing manual activities by connecting concept probes and mapping them to monitoring components of the business process, even performed on a computer, are parts of the recited abstract idea, as discussed above. *See* Ans. 4.

As the argued elements are part of the abstract idea, they are not additional elements that integrate the identified abstract idea into a practical application. *See* Guidance, 84 Fed. Reg. 54–55 (“[E]valuate integration into a practical application by: (a) Identifying whether there are any additional elements recited in the claim beyond the judicial exception(s)”). Accordingly, we determine the claim does not integrate the judicial exception into a practical application. *See* Guidance, 84 Fed. Reg. at 54. Because we determine the “claim recites a judicial exception and fails to integrate the exception into a practical application,” we proceed with

“further analysis pursuant to the second step of the *Alice/Mayo* test (USPTO Step 2B).” Guidance, 84 Fed. Reg. at 51.

II. Step 2B

Appellant argues the Examiner errs in determining “the claimed method is simply implementing an abstract idea using general-purpose devices to perform generic computer functions.” Appeal Br. 14; *see also* Final Act. 4. We disagree. The claimed “network” and “remote computing device[s],” as well as the recited “human task monitoring and contextual analysis component (HTMCA) which monitors manual activities,” “memory,” and “processor” are part of the recited judicial exception itself, as discussed above. *See* Ans. 3–4; *see also* Guidance, 84 Fed. Reg. at 56 (“[E]valuate the additional elements individually and in combination” in step 2B.); Guidance fn. 24 (“USPTO guidance uses the term ‘additional elements’ to refer to claim features, limitations, and/or steps that are recited in the claim beyond the identified judicial exception.”) (emphasis omitted).

Regarding the claimed “HTMCA” component and the related network, computing devices, memory and processor, we agree with the Examiner that the limitations are well-understood, routine, and conventional. *See* Final Act. 4; Ans. 4; *see also* Figs. 1A, 1B, 5; Spec. ¶¶ 21, 26, 29–31, 33–43, 58–60; *Alice*, 573 U.S. at 226 (“But what petitioner characterizes as specific hardware . . . is purely functional and generic. 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.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (Claims reciting, *inter alia*, sending messages over a network, gathering statistics, using a computerized

system to automatically determine an estimated outcome, and presenting offers to potential customers found to merely recite “well-understood, routine conventional activit[ies].”). Similarly, the other elements recited in claim 1, such as linking computing devices, storing/mapping/matching concept probes, and correlating the manual task information, do not “improve functioning of computer itself or provide a technical improvement outside of the advantages that SOA are known to provide” and thus, “[p]roviding the aggregated information relates data organization rather than a technical improvement.” *See* Final Act. 5; Ans. 4.

As such, Appellant’s claims can be distinguished from patent-eligible claims such as those in *McRO* that improved how the physical display operated to produce better quality images. The claimed invention here merely uses generic computing components to monitor manual services related to a business process. This generic computer implementation is not only directed to a mental process, but also does not improve a specific process like a display mechanism as was the case in *McRO*. *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (distinguishing *McRO*) (“[M]erely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis”) (quotations omitted).

Other Considerations

We have reviewed all the arguments Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. Appeal Br. 10–15. We find that our analysis above substantially covers the substance of all the arguments which have been made. But, for purposes of completeness, we will add the following.

To the extent Appellant argues that the Examiner erred in adequately supporting this determination by not providing evidence, or considering the claims in their entirety, to justify identifying the specific limitations as reciting an abstract idea, or “whether the additional elements represent well-understood, routine, conventional activity,” under the new Guidance (*see* Reply Br. 3–6), we are unpersuaded. In this regard, there is no requirement that Examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea or whether the additional elements amount to significantly more. *See, e.g.*, MPEP § 2106.07 (a)(III) (2018) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a question of law. Thus, the court does not require ‘evidence’ that a claimed concept is a judicial exception, and generally decides the legal conclusion of eligibility without resolving any factual issues.” (Citations omitted.)) Moreover, the Federal Circuit made clear in *Berkheimer* that “not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). In fact, the Federal Circuit in *Berkheimer* did not require evidentiary support for independent claim 1 because “[t]he limitations [of claim 1] amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components.” *Id.* at 1370.

All that is required of the USPTO to meet its prima facie burden of production is that the Examiner set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulated and informative manner as to meet the notice requirement of 35 U.S.C. § 132.

As the statute itself instructs, the Examiner must “notify the applicant,” “stating the reasons for such rejection,” “together with such information and references as may be useful in judging the propriety of continuing the prosecution of his application.” 35 U.S.C. § 132; *see also In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011) (declining “to impose a heightened burden on examiners beyond the notice requirement of § 132”). Here, as we found above, the Examiner has made these findings as required by the statute. Specifically, in rejecting the pending claims under § 101, the Examiner notified Appellant that the claims recite steps that describe “the abstract concept of monitoring business processes and manual tasks,” a method of organizing human activity or mental processes, and that the claims do not include additional elements that would amount to significantly more than the abstract idea. *See* Final Act 2–5. Thus, we find that a prima facie case was established by the Examiner.

Conclusion

For at least the above reasons, we agree with the Examiner that claim 1 is “directed to” an abstract idea and does not recite an “inventive concept.” Accordingly, we sustain the Examiner’s rejection of claim 1 and the remaining claims which fall therewith, under 35 U.S.C. § 101.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1–23	101	Eligibility	1–23	

Appeal 2019-003076
Application 14/560,293

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