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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRADLEY HOOVER, MAKSYM LYTVYN,
and OLEKSIY SHEVCHENKO

Appeal 2019-003336
Application 15/143,982
Technology Center 2600

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and ADAM J. PYONIN, *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. Appellant identifies Grammarly, Inc. as the real party in interest. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

The application is directed to "methods and systems of grammar checking comprising a grammar checking facility for analyzing, in a cloud computing environment, a source-supplied text." Abstract. Claims 1–20 are pending; claims 1, 7, and 13 are independent. Appeal Br. 8–12. Claim 1 is reproduced below for reference (emphases and some formatting added):

> 1. A system of grammar checking, comprising:
>
> *a grammar checking facility* for analyzing a computer-based text for grammatical errors,
>
> wherein the grammar checking facility is adapted to identify and correct grammatical errors based on at least one grammatical rule from a plurality of grammatical rules corresponding to the identified grammatical error,
>
> wherein the plurality of grammatical rules are stored in the grammar checking facility,
>
> wherein the grammar checking facility is provided with the computer-based text from a client computing device across a network,
>
> wherein *the grammar checking facility performs an analysis of the computer-based text to identify and correct grammatical errors*,
>
> wherein corrections are incorporated into a corrected computer-based text, and the grammar checking facility provides the client computing device across the network with *the corrected computer-based text along with a customized writing reference guide that includes an explanation of the corresponding grammatical rule for the at least one identified grammatical error* in the computer-based text from the client computing device,
>
> wherein *a corresponding portion of the provided computer-based text comprising the at least one identified*

> *grammatical error is embedded into the explanation of the corresponding grammatical rule*.

The Examiner's Rejection

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Final Act. 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 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 "claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more." Final Act. 2; *see also Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (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").

In 2019, the USPTO published revised guidance on the application of § 101 ("Guidance"). *See, e.g.*, USPTO 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Memorandum"); USPTO October 2019 Update: Subject Matter Eligibility (Oct. 17, 2019) ("Update"), noticed at 84 Fed. Reg. 55942 (Oct. 18, 2019).

Under Step 2A of the Guidance, the Office 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* 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, 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.

See Memorandum, 84 Fed. Reg. at 54–56.

Appellant does not separately argue the claims. *See* Appeal Br. 3–7. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded the Examiner's rejection is in error. We adopt the Examiner's findings and conclusions as our own, and we add the following primarily for emphasis and clarification with respect to the Guidance.

A. Step 2A, Prong One

Claim 1 recites a "system of grammar checking," including various computing components (i.e., a grammar checking facility, a client computing device, and network). Pursuant to Step 2A, Prong One of the Guidance, we agree with the Examiner that claim 1 recites a judicial exception. *See* Final Act. 2–4, Ans. 4–5.

Particularly, claim 1 recites the limitations of:

1. a "grammar checking facility [that] is adapted to identify and correct grammatical errors based on at least one grammatical rule from a plurality of grammatical rules corresponding to the identified grammatical error";
2. "the grammar checking facility performs an analysis of the computer-based text to identify and correct grammatical errors";
3. "corrections are incorporated into a corrected computer-based text, and" the grammar checking facility provides "the corrected computer-based text along with a customized writing reference guide that includes an explanation of the corresponding grammatical rule for the at least one identified grammatical error"; and
4. "a corresponding portion of the provided computer-based text comprising the at least one identified grammatical error is embedded into the explanation of the corresponding grammatical rule."

These limitations are intended to "provide for customized grammar teaching" and "may be applied to text to prepare customized feedback for a user" (Spec. ¶ 68), in which "actual text may be embedded within the general rule so as to fully enable a user to understand grammatical errors existing in the user-provided text." Spec. ¶ 69. These limitations recite:

1. teaching a user by providing instructional materials, which is an example of "managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)"; and
2. analysis of text for grammatical errors, which are examples of performing "observation[s], evaluation[s], judgment[s], opinion[s]."

Memorandum, 84 Fed. Reg. at 52. Therefore, the claim recites both the abstract concepts of "certain methods of organizing human activity" and "mental processes—concepts performed in the human mind." *Id*.; *see* Final Act. 2–4; Ans. 4–5.

Appellant argues "the Examiner's formulation of the allegedly abstract idea in the present claims is at a very high level of generality without regard to all of the claim language and without viewing the claim as a whole" and "essentially renders the claim language all but meaningless." Appeal Br. 5, citing *Diamond v. Diehr*, 450 U.S. 175, 188 (1981), *Parker v. Flook*, 437 U.S. 584, 594 (1978), and *McRO Inc. v. Namco Bandai Games America, Inc.*, 837 F.3d 1299 (Fed. Circ. 2016).

Appellant does not persuade us the Examiner errs in determining claim 1 recites an abstract idea. *See* Final Act. 2. As discussed above, claim 1 recites particular limitations that represent abstract concepts under the Guidance. *See* Memorandum, 84 Fed. Reg. at 54; Alice, 573 U.S. at 216. Further, we do not agree that the eligibility of the claims in *Diehr*, *Flook*, and *McRO* shows that Appellant's claim 1 is patent eligible. For example, in *McRO*, "[i]t is the incorporation of the claimed rules, not the use of the computer, that "improved [the] existing technological process." *McRO*, 837 F.3d at 1314. In contrast (and as discussed below with respect to Prong

Two), the present claims do not recite a set of rules used to improve a technical process; instead the claims use generic computing resources to correct grammar and provide instruction to the user. *See* Spec. ¶¶ 68–69.

Accordingly, we conclude the claims recite a judicial exception under Prong One of the Guidance. *See* Memorandum, 84 Fed Reg. at 54.

B. Step 2A, Prong Two

Appellant contends the following:

> [the] claimed method provides improved and more reliable grammar checking, and provides a way to more effectively teach grammatical rules to the user, to enable the user to gain a better understanding and memorization of writing principles, and to enable more engaging learning than in the prior art.

Appeal Br. 6–7. Appellant contends that "the grammar checking facility may synthesize customized feedback that includes both a general grammatical rule and actual text provided by the user that is relevant to the rule" and thus "enable[s] more engaging learning than in the prior art." Reply Br. 4.

We are not persuaded the Examiner's rejection is in error pursuant to Step 2A, Prong Two of the Guidance. *See* Final Act. 3, Ans. 7. The features asserted by Appellant—such as the grammar checking facility's customized feedback that includes both the general rule and the user's text—are part of the abstract idea discussed above, and do not integrate the judicial exception into a practical application.

Further, we agree with the Examiner that "the claims do no more than describe a desired function outcome, without providing any limiting detail that confines the claim to a particular solution to an identified problem."

Final Act. 4. That is, claim 1 broadly recites the result (corrected text along with a customized writing reference guide), rather than sufficiently claiming a technical means of achieving the result. *See Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) ("The claim requires the functional results . . . but does not sufficiently describe how to achieve these results in a non-abstract way.").

The Examiner finds, and we agree, that the claims recite a judicial exception relating to "grammar checking[,] along with a generic computer that is simply used as a tool to implement the abstract idea." Ans. 9. Here, the claims do not change the underlying or other technology, rather the claimed techniques process information and serve as a pedagogical tool. The claimed additional elements—the client computing device and network—"merely use[] a computer as a tool to perform an abstract idea" or "do[] no more than generally link the use of a judicial exception to a particular technological environment." Memorandum, 84 Fed. Reg. at 55; *see Customedia Techs., LLC v. Dish Network Corp.*, No. 2018-2239, 2020 WL 1069742, at *3 (Fed. Cir. Mar. 6, 2020) ("We have held that it is not enough, however, to merely improve a fundamental practice or abstract process by invoking a computer merely as a tool.").

Accordingly, we determine claim 1 does not integrate the judicial exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54. As the claim recites a judicial exception and fails to integrate the exception into a practical application, the claim is "directed to the . . . judicial exception." *Id*. at 54.

C. Step 2B

We are not persuaded the Examiner errs in determining that when "viewing [the] claims as a whole" (Ans. 8), they "do not include additional elements that are sufficient to amount to significantly more than the judicial exception." Ans. 12. Rather, the additional elements—individually and in combination—are well understood, routine, and conventional in view of the record before us. *See* Figs. 1, 1A, 3–4; Spec. ¶¶ 50–51, 72–74; *see also 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."); *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019). Thus, we conclude the elements of independent claim 1, individually and as an ordered combination, do not provide significantly more than the recited judicial exception.

Accordingly, we agree with the Examiner that independent claim 1 is patent ineligible, as well as independent claims 7 and 13, and all claims dependent therefrom. *See* Appeal Br. 3–7.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	

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)(1)(iv).

AFFIRMED