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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HOWARD W. LUTNICK, JOSEPH NOVIELLO,
MICHAEL SWEETING, LEE AMAITIS,
and JIM JOHNSON

Appeal 2019-003888
Application 13/620,496
Technology Center 3600

Before NORMAN H. BEAMER, ADAM J. PYONIN, and
GARTH D. BAER, *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 BGC Partners, Inc. as the real party in interest. Appeal Br. 3.

STATEMENT OF THE CASE

Introduction

The application is directed "to trading application program interfaces." Spec. ¶ 2. Claims 1–3, 5–12, and 20–24 are pending; claims 1, 12, and 20 are independent. Appeal Br. 11–13. Claim 1 is reproduced below for reference:

> 1. A system of a distributed trading environment for allowing traders to switch between multiple issues in a trading interface, the system comprising:
>
> a display device;
>
> a keyboard that has trading interface keys, wherein the keys include a key designated for a benchmark issue and a key designated for at least one non-benchmark issue;
>
> a communication link that networks the system to the distributed trading environment; and
>
> a processor configured to:
>
> direct the display device to display a first trading quadrant having trading information related to the benchmark issue, in which the trading information is received through the communication link and from the distributed trading environment;
>
> provide a trader with an opportunity to select the at least one non-benchmark issue that is related to the benchmark issue by pressing the key designated for the at least one non-benchmark issue; and
>
> in response to a pressing of the key designated for the at least one non-benchmark issue, direct the display device to display a second trading quadrant that includes trading information related to the non-benchmark issue, in which the trading information is received through the communication link and from the distributed trading environment.

Rejection

Claims 1–3, 5–12, and 20–24 stand rejected under 35 U.S.C. § 101 as being patent ineligible. 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 ([an] abstract idea) without significantly more." Final Act. 2, 4–5; *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").

After the filing of the Appeal Brief—but prior to the mailing of the Answer or the filing of the Reply Brief—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. 5–10. 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 a distributed trading environment for allowing traders to switch between multiple issues in a trading interface," including various computing hardware (i.e., a display, keyboard with keys, communication link, and processor). Pursuant to Step 2A, Prong One of the

Guidance, we agree with the Examiner that claim 1 recites a judicial exception. *See* Final Act. 3, Ans. 12–13. Particularly, claim 1 recites the keys are designated for "a benchmark issue and . . . at least one non-benchmark issue," and the processor is configured to perform the following steps: "direct the display device to display a first trading quadrant . . ., in which the trading information is received through the communication link and from the distributed trading environment," "provide a trader with an opportunity to select the at least one non-benchmark issue that is related to the benchmark issue by pressing the key designated for the at least one non-benchmark issue," and "in response to a pressing of the key designated for the at least one non-benchmark issue, direct the display device to display a second trading quadrant that includes trading information related to the non-benchmark issue, in which the trading information is received through the communication link and from the distributed trading environment."

These limitations assist a trader in "using a keyboard to execute a trade" (Spec. ¶ 6), and recite "fundamental economic principles or practices" (Memorandum 84 Fed. Reg. at 52) that include "placing an order based on displayed market information" (Update page 5). These limitations also recite "commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations)." Memorandum 84 Fed. Reg. at 52. Thus, the claim recites the abstract concept of certain methods of organizing human activity including. *See id*.

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 argues that "the claimed invention is directed to improvements in **computer performance that are implemented using a particular machine and** may help control activity over the network." Reply Br. 5, citing Spec. ¶¶ 5, 8, 10–11, 13, 39. Reply Br. 5. Appellant further contends that "the additional features of the display device, the keyboard with designated keys and the communication link, are integrated into the claim as a whole and act in concert, to provide the practical application into which the abstract idea is integrated and meaningfully limited." Reply Br. 7.

We are not persuaded the Examiner errs in determining claim 1 is directed to the recited judicial exception. *See* Final Act. 3–5, Ans. 4–14. In addition to the limitations that are part of the judicial exception discussed above in Prong One, the remaining claim features do not comprise additional elements, individually or in combination, that integrate the exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54–55; *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018) (The abstract idea itself cannot supply the inventive concept, "no matter how groundbreaking the advance.").

Claim 1 recites the system comprises a "processor," a "display device," a "keyboard" having designated keys, and a "communication link." We agree with the Examiner that the claimed use of computer equipment[2], recited at a high level of generality to effectuate trading, is

[2] We note nearly every keyboard has keys designated for a particular or assignable purpose (e.g., a key designated to print the letter "a" or a key assigned a particular macro command). *See, e.g., Christian v. Muller*, 165

> an attempt to limit the abstract idea to a particular technological environment. Accordingly, these additional elements do not integrate the abstract idea into a practical application because they do not impose any meaningful limits on practicing the abstract idea.

Ans. 13; *see* Memorandum, 84 Fed. Reg. at 55.

Appellant's reliance on case law, particularly *Trading Technologies International, Inc. v. CQG, INC.*, 675 Fed. Appx. 1001 (Fed Circ. 2017) (non-precedential), is not persuasive. Here, the claims include no inventive technology to gather and display information; at most, the claimed system will improve a trader's efficiency in conducting trades, rather than improving the underlying computer or other system. *See* Ans. 7, 8; Spec. ¶¶ 5–10; *see also Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1090 (Fed. Cir. 2019) ("This invention makes the *trader* faster and more efficient, not the computer. This is not a technical solution to a technical problem.").

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" (*id*. at 51), "the claim is directed to the . . . judicial exception" (*id*. at 54).

F.2d 466, 467 (C.C.P.A. 1948) (relating to "a keyboard on which are carried the usual amount keys and control and function keys").

C. Step 2B

Appellant contends that "the claims nonetheless are patent eligible under Step 2B of [Guidance]" (Reply Br. 7), because "the claims include additional subject matter that is not well-understood, routine, conventional activity and [is] thus an 'inventive concept' at Step 2B." Reply Br. 7–8.

We are not persuaded the Examiner errs in determining the additional elements of claim 1 are "are generic computer components claimed to perform their basic functions." Ans. 6. Outside of the identified judicial exception, the Examiner finds, and we agree, that

> [t]he claims at issue do not require any nonconventional computer, network, or database components, or even a "non-conventional and non-generic arrangement of known, conventional pieces," but merely call for performance of the claimed switching of multiple issues in a trading interface ["]on a set of generic computer components."

Ans. 10–11. We find the Examiner's determination to be reasonable, in view of the record before us. *See* Spec. ¶¶ 29–55; *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 find independent claim 1's elements, individually and as an ordered combination, do not provide significantly more than the recited judicial exception.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 5–12, 20–24	101	Eligibility	1–3, 5–12, 20–24	

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