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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL F. SCHMIDT

Appeal 2019-004097
Application 15/002,744
Technology Center 3600

Before MICHAEL W. KIM, *Vice Chief Administrative Patent Judge*, and
MURRIEL E. CRAWFORD and AMANDA F. WIEKER, *Administrative
Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's
final rejection of claims 1, 2, and 4–22. We have jurisdiction under 35
U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims a system and method for tracking filter activity and
monitoring trends associated with said activity and more specifically a
system and method for providing information to the user of an online catalog

about patterns in filter parameter selections based on the filter parameters that a group of previous users specified while navigating the catalog. (Spec. ¶ 3, Title).

Claim 1 is representative of the subject matter on appeal.

1. A computer system designed to provide filter parameter trend information, comprising:

at least one hardware processor; and

at least one memory operatively coupled to the at least one hardware processor and storing instructions which, when executed by one or more of the at least one hardware processors, cause the one of more of the at least one hardware processors to:

store an electronic catalog of products, wherein the catalog comprises a taxonomy of products categories and products within the categories, the catalog further comprising attributes which describe products in a category and at least one value for said attributes;

accept plural sets of filter parameters from a plurality of corresponding users, where each filter parameter specifies at least one of a product category, an attribute, and at least one attribute value for the attribute;

receive the sets of filter parameters, query the catalog based on each set of filter parameters, and present a subset of products in the catalog corresponding to each set of the filter parameters for display to a corresponding user;

track the received sets of filter parameters;

generate a set of user activity data, based on the received sets of filter parameters, that indicates the sets of filter parameters selected by said corresponding users; and

in response to a user selection of at least one filter parameter, provide a graphical indication of the user activity data related to previous users selecting filter parameters that are the same or similar to the user's selection.

THE REJECTION

Claims 1, 2, and 4–22 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 2, and 4–22 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Solan (US 8,001,152 B1, iss. Aug. 16, 2011) in view of Cancel et al. (US 2008/0189281 A1, pub. Aug. 7, 2008) (“Cancel”).

ANALYSIS

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1, 2, and 4–22 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, . . . then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a search for an “inventive concept”—*i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

Alice Corp. v. CLS Bank Int’l, 573 U.S. 208, 217–218 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)) (citations omitted).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Federal Circuit has

explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing we apply a “directed to” two-prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the judicial exception is integrated into a practical application. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, pp. 50–57 (Jan. 7, 2019) (“Guidance”).

The Examiner determines that the claims are directed to storing a catalog, accepting filtering parameters, querying the catalog based on the filtering parameters to present a subset of products in the catalog and further tracking and providing a graphical indication of user activity data. (Final Act. 5). The Examiner determines that the claims are directed to a method of organizing human activity in the form of a fundamental economic practice. (*Id.* at 8). The Examiner finds that the claims when examined on a limitation-by-limitation basis and in ordered combination do not include an inventive concept. (*Id.* at 5).

The Specification discloses that the present invention relates to systems and methods for providing information to the user of an online catalog about patterns in filter parameter selection based on the filter parameters that a group of previous users specified while navigating the

catalog. (Spec. ¶ 3). The goal of the present invention is to present an electronic catalog that is well-organized and presented so that consumers can make good purchasing decisions and a company can purchase advertising to market their products. (*Id.* ¶ 4).

Consistent with this disclosure, claim 1 recites a computer system comprising “at least one hardware processor,” “one memory . . . storing instructions which . . . cause . . . the at least one hardware processor to,” “store an electronic catalog of products,” “accept plural sets of filter parameters,” “receive the sets of filter parameters,” “track the received sets of filter parameters,” “generate a set of user activity data,” and “in response to a user selection . . . provide a graphical indication of the user activity data.”

We thus agree with the Examiner’s determination that claim 1 is to controlling the behavior of persons concerning actions in regard to interactions with an electronic catalog. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972), in particular, that the claims at issue here are to an abstract idea. Controlling the behavior of persons interactions with an electronic catalog is one of certain methods of organizing human behavior, namely, “managing personal interactions between people but for the recitation of generic computer components” (Ans. 4), which is not eligible subject matter. *See Alice*, 573 U.S. at 217–20. In addition, as claim 1 relates to a commercial interaction through an electronic catalog, claim 1 relates to one of certain methods of organizing human activity according to the Guidance. Guidance, 84 Fed. Reg. at 52.

Also, we agree with the Examiner that claim 1 covers something that could be performed in the human mind including observation and judgment

of opinion that falls within the mental process grouping of judicial exceptions. (Ans. 4). Thus, we find that claim 1 recites a judicial exception of one of certain methods of organizing human activity and, in the alternative, a mental process.

Turning to the second prong of the “directed to test,” claim 1 requires a “hardware processor” and “a memory.” These recitations do not impose “a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53–54. We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes any improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the Guidance. *See* Guidance, 84 Fed. Reg. at 55. In this regard, the recitations of a hardware processor and a memory do not

affect an improvement in the functioning of the hardware processor or the memory or other technology, do not recite a particular machine or manufacture that is integral to the claim, and do not transform or reduce a particular article to a different state or thing. *See* Guidance, 84 Fed. Reg. at 55. Thus, claim 1 is directed to a judicial exception that is not integrated into a practical application and thus claim 1 is directed to “abstract ideas.”

Turning to the second step of the *Alice* analysis, because we find that claim 1 is directed to abstract ideas, the claim must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The introduction of a hardware processor and memory into the claim does not alter the analysis at *Alice* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223–24 (alterations in original) (citations omitted).

Instead, “the relevant question is whether [claim 1] here do[es] more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. It does not.

Taking the claim elements separately, the function performed by the computer at each step of the process is conventional. Using a computer to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, and conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am., Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-access/display is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display,

allowing access, and receiving payment recited an abstraction); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract); *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Claim 1 does not, for example, purport to improve the functioning of the hardware processor or the memory. As we stated above, claim 1 does not affect an improvement in any other technology or technical field. Thus, claim 1 amounts to nothing significantly more than instructions to apply the abstract idea of information access using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 226.

We have reviewed all the arguments (Appeal Br. 5–16; Reply Br. 1–6) Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of emphasis, we will address various arguments in order to make individual rebuttals of same.

Appellant argues that claim 1 integrates any abstract idea into a practical application. (Appeal Br. 9). This argument is not persuasive because Appellant does not explain why, in their view, claim 1 integrates the abstract idea into a practical application.

Appellant argues that the claims do not preempt the concept of tracking users and providing guidance or any other concepts for the matter.

(Appeal Br. 9). Although preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility. *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), cert. denied, 136 S. Ct. 701 (2015) (“[T]hat 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.”). And, “[w]here 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*, 788 F.3d at 1379.

We do not agree with Appellant that the claims are similar to the claims recited in *Trading Technologies Inc. v. CQG, Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017) (nonprecedential) (hereinafter “*Trading Technologies*”). (Appeal Br. 10-11). In *Trading Technologies*, the claims recited “dynamically displaying a second indicator in one of a plurality of locations in an ask display region, each location in the ask display region corresponding to a price level along the common static price axis.” *Id.* at 1003. No such dynamic positioning of data is recited in the claims at hand. In a related precedential *Trading Technologies* case, also reciting a graphical user interface, the Court held “[t]he claims are focused on providing information to traders in a way that helps them process information more quickly, not on improving computers or technology.” *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1384 (Fed. Cir. 2019). Similarly, the claims here are focused on providing information to users in a way that helps

them process information more quickly, not on improving computers or technology.

We are not persuaded of error by Appellant’s argument that the Examiner ignored expressly recited claim limitations. Specifically, Appellant argues that the Examiner ignored the limitation “generate a set of user activity data, based on the received sets of filter parameters, that indicates the sets of filter parameters selected by said corresponding users.” (Appeal Br. 14). However, this language was not ignored by the Examiner. The Examiner determined that this subject matter is part of storing a catalog, accepting filtering parameters, querying the catalog based on the filtering parameters to present a subset of products in the catalog and further tracking and providing a graphical indication of user activity data, and “something that could be performed in the human mind including observation and judgement of opinion,” which is a mental process. (Final Act. 5).

We do not agree with Appellant that the claims are necessarily rooted in computer technology like the claims in *DDR Holdings*. (Appeal Br. 14). In *DDR Holdings*, the Court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *DDR*, 773 F.3d at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *Id.* at 1258. The Court cautioned, however, “that not all claims purporting to address Internet-centric challenges are eligible for patent.” *Id.* For example, in

DDR Holdings the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. See *id.* at 1258–59 (citing *Ultramercial*, 772 F.3d at 715–16). As noted there, the *Ultramercial* claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 714). Nevertheless, those claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.*

Appellant’s asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited “providing [a] media product for sale at an Internet website;” “restricting general public access to said media product;” “receiving from the consumer a request to view [a] sponsor message”; and “if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query.” *Ultramercial*, 772 F.3d at 712. Similarly, Appellant’s asserted claims recite receiving, analyzing, modifying, and transmitting information. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the Examiner ignored all the elements of claim 1 except the use of taxonomy and a generic computer in performing the

Berkheimer v. HP Inc., 890 F.3d 1369, 1374 (Fed. Cir. 2018) analysis.
(Appeal Br. 15).

The court in *Berkheimer* held that “[t]he patent eligibility inquiry may contain underlying issues of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018) (quoting *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016) (“The § 101 inquiry ‘may contain underlying factual issues.’”)). The inquiry as to whether a claim element or combination is well-understood, routine, and conventional falls under step two in the § 101 framework. *Berkheimer v. HP Inc.*, 890 F.3d at 1374. As such, there is no genuine issue of material fact when the only alleged “inventive concept” is the abstract idea. *Id.* (“*Berkheimer* and *Aatrix* leave untouched the numerous cases from this court which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.”) (citation omitted). “When there is no genuine issue of material fact regarding whether the claim element or claimed combination is well-understood, routine, [and] conventional to a skilled artisan in the relevant field, this issue can be decided on summary judgment as a matter of law.” *Berkheimer*, 881 F.3d at 1368. *See also Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1368 (Fed. Cir. 2018) (“A factual allegation or dispute should not automatically take the determination out of the court’s hands; rather, there needs to be justification for why additional evidence must be considered—the default being a legal determination.”). Thus, evidence *may* be helpful where, for instance, facts are in dispute, but evidence is not always necessary. Here, the only recitations in addition to the abstract ideas are the hardware processor and the memory. The

Examiner correctly identifies these recitations in analyzing the claims under *Berkheimer*. (Final Act. 13).

We are not persuaded of error on the part of the Examiner by Appellant's argument that the method of the claims cannot be performed entirely by the human mind or with pen or paper because the steps specifically call for operations that must be performed by a computer. (Reply Br. 2). Although, the steps recited by independent claim 1 are performed "automatically," mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*."); *see also In re Salwan*, 681 F. App'x 938, 941 (Fed. Cir. 2017) (claims for organizing patient health information, transferring patient health information to a patient network, and billing insurance companies held patent-ineligible).

We do not agree with Appellant's argument that the claims clearly do not fit the definition of a fundamental economic practice, as it is defined in the Guidance, because claim 1 clearly relates to an electronic catalog of products, which relates to a commercial interaction, which the Guidance states is a fundamental economic practice. (Reply Br. 3). We also do not agree that the claims do not involve observations, evaluations, judgments, or opinions, and thus are not a mental process because claim 1 recites a process in which stored products are evaluated against a set of filter parameters which clearly relates to evaluations and judgements. *Id.*

In view of the foregoing, we will sustain the Examiner's rejection of

claim 1 under 35 U.S.C. § 101. We will also sustain the rejection as it is directed to claims 2 and 4 to 8, 11, 12, 14, 16–19 because Appellant has not argued the separate eligibility of these claims.

In regard to claims 9, 13 and 20, Appellant argues that the recitation that the graphical indication is displayed to the user in a subpart of a window increases the efficiency and accuracy of locating desired products in the catalog, and thus describe technical improvements. (Appeal Br. 10).

Although the Appellant may be correct that claim 1 recites a method that increases the efficiency and accuracy of locating desired products in the catalog, an improvement in efficiency and accuracy alone does not render claim 1 patent eligible. “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).

In view of the foregoing, we will sustain the rejection as it is directed to claims 9, 13 and 20.

In regard to claims 10, 15 and 21, Appellant argues that because these claims recite that the graphical indication includes hyperlinks to filter parameters it provides an improved catalog navigation and facilitates location of desired products. However, any such improvement lies in the abstract idea itself, not to any technological improvement. *See BSG Tech*

LLC v. Buyseasons, Inc., 899 F.3d 1281, 1287–88 (Fed. Cir. 2018). In this regard, these claims do not recite an improvement to the processor, the memory or the hyperlinks.

In view of the foregoing, we will sustain this rejection as it is directed to claims 10, 15 and 21.

REJECTION UNDER 35 U.S.C. § 103(A).

We will not sustain this rejection because we agree with Appellant that the prior art does not disclose “an electronic catalog . . . further comprising attributes which describe products in a category and at least one value for said attributes” as recited in claim 1.

Appellant’s Specification discloses that the electronic catalog stores a taxonomy that associates products with unique product IDs, then creates tables that associate the IDs with attributes. The tables associate the IDs within the attributes with various values. Figure 2 depicts such a table that includes a desktop PC product 202 that includes the attribute of a RAM size and the attribute value of 1GB.

The Examiner relies on Solan at column 3, lines 29–39 and column 4, lines 11–23 for teaching this subject matter. Column 3, lines 29–39 describes a searchable entity which allows searching according to features that characterize the item but does not describe a *value* associated with the feature. Column 4, lines 11–23 describes a database with a repository of items that are searchable according to features of the items but does not describe a *value* associated with the feature.

In view of the foregoing, we will not sustain the rejection of claim 1 under 35 U.S.C. § 103(a). We will not sustain the rejection of the remaining

claims for the same reason.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1, 2, and 4–22 under 35 U.S.C. § 101.

We conclude the Examiner did err in rejecting claims 1, 2, and 4–22 under 35 U.S.C. § 103(a)

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4–22	101	Eligibility	1, 2, 4–22	
1, 2, 4–22	103	Solan, Cancel		1, 2, 4–22
Overall Outcome			1, 2, 4–22	

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