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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/967,696	12/31/2007	David Weiss	06-2062	7490
63710	7590	11/07/2019	EXAMINER	
INNOVATION DIVISION CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022			KAZIMI, HANI M	
			ART UNIT	PAPER NUMBER
			3691	
			NOTIFICATION DATE	DELIVERY MODE
			11/07/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID WEISS

Appeal 2019-005233
Application 11/967,696
Technology Center 3600

Before JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ seeks review under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 2, 4–6, 8–10, and 13–15. 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. Appellant identifies the real party in interest as CFPH, LLC. (Appeal Br. 2.)

CLAIMED SUBJECT MATTER

Appellant's invention relates to a method for managing and trading using a shared order book. (Spec. 1.)

Claim 1 is the sole independent claim on appeal. It recites:

1. A method comprising:

receiving, by at least one processor communicatively coupled with at least one memory device, a plurality of orders for an item from computing devices associated with a plurality of internal users;

receiving, by the at least one processor, a plurality of orders for the item from computing devices associated with a plurality of external users;

determining, by the at least one processor, a best bid and a best offer from the plurality of the orders from the plurality of internal users and from the plurality of the orders from the plurality of the external users; and

directing, by the at least one processor, an interface screen to be displayed at a user computing device, the interface screen comprising a shared order book for the item that comprises:

a listing of the orders from the plurality of internal users and the plurality of external users sorted based at least by price,

the shared order book arranged in a set of bid side columns and a set of ask side columns, each of the set of columns comprising at least one price column and at least one size column, and

at least one column indicating a source of at least one of each of an order from an internal user and an order for an external user.

REJECTION

Claims 1, 2, 4–6, 8–10, and 13–15 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. Section 101, however, “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Alice applies a two-step framework, earlier set out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* at 218. If the claims are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, we apply a “directed to” two prong test to: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim

is more than a drafting effort designed to monopolize the judicial exception.” *See* USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) [hereinafter “2019 Guidance”].

Here, the Examiner determines that claim 1 “simply describes a series of steps for managing and trading orders by using a shared order book as an internal exchange.” (Answer 5.) The Examiner also determines that the claim limitations “recite an abstract idea because they describe business interaction/sale activity that falls within the enumerated group of ‘certain methods of organizing human activity.’” (*Id.* at 6 (quoting 2019 Guidance at 52).)

Appellant disagrees and argues that at least the features of “receiving . . . orders . . . from computing devices associated with . . . internal users,” “receiving . . . orders . . . from computing devices associated with . . . external users,” “directing . . . an interface screen to be displayed at a user computing device, the interface screen comprising a shared order book for the item that comprises: . . . orders from the . . . internal users and . . . external users sorted,” and “indicating a source . . . of an order from an internal user and an order for an external user,” “provides an improvement in the functioning of a computer, or an improvement to other technology.” (Reply Br. 2–3 (emphasis omitted).)

Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

The ‘directed to’ inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon Rather, the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’ *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant technology] or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* 2019 Guidance at 54–55.

The Specification provides evidence as to what the claimed invention is directed. In this case, the Specification describes the invention as relating to a method for managing and trading using a shared order book. (Spec. 1.) Claim 1 provides further evidence. Claim 1 recites “[a] method comprising: receiving . . . a plurality of orders . . . associated with . . . internal users,” “receiving . . . a plurality of orders . . . associated with . . . external users,” “directing . . . an interface screen to be displayed . . . the interface screen comprising,” “a listing of the orders,” “arranged in a set of bid side columns and a set of ask side columns,” “and at least one column indicating a source . . . of an order.”

This evidence shows that claim 1 is directed to receiving and displaying orders for trading. This is in accord with the Examiner’s

determination.² (*See* Answer 5.) The Federal Circuit has found claims to similar subject matter to be directed to abstract ideas. *See, e.g., Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1384 (Fed. Cir. 2019) [hereinafter “*IBG II*”] (“[T]he focus of the claimed advance over the prior art’ is providing a trader with additional financial information to facilitate market trades, an abstract idea.”), *Alice*, 573 U.S. at 224 (“[C]reat[ing] electronic records, track[ing] multiple transactions, and issu[ing] simultaneous instructions,” have been identified by the courts as within the realm of abstract ideas.), *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (Claims “directed to the formation of financial transactions in a particular field . . . and data collection related to such transactions” determined to be directed to an abstract idea.)

The steps recited in claim 1 are performed by receiving information, analyzing the information (determining), and displaying the information. Claim 1 performs these steps using a generic “at least one processor communicatively coupled with at least one memory device” and generic “computing devices.” (*See* Spec. ¶¶ 51–52.) The claim limitations do not recite technological implementation details for any of the steps. Indeed, beyond the recitation of a generic “at least one processor communicatively coupled with at least one memory device” and generic “computing devices,” claim 1 does not recite any computer-related components. Nor does claim 1

² Although we and the Examiner describe, at different levels of abstraction, to what the claims are directed, it is recognized that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). That need not and, in this case does not, “impact the patentability analysis.” *See id.* at 1241.

recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting [method].” *Apple, Inc.*, 842 F.3d at 1241. Claim 1 merely recites functional results to be achieved by any means. Additionally, Appellant’s Specification makes clear that a processor coupled with a memory, and computing devices were well known. (*See, e.g.*, Spec. ¶¶ 51–52.) Claim 1 does not recite a specific asserted improvement to computer technology.

Nor do we see how the recitation of a generic “at least one processor communicatively coupled with at least one memory device” and generic “computing devices,” even in conjunction with the recited functions, “ensure[s] ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Alice*, 573 U.S. at 221 (alterations in original) (quoting *Mayo*, 566 U.S. at 77). Claim 1 merely uses the generic processor and generic computing devices as tools to perform the abstract idea.

Nonetheless, Appellant argues that the “claimed features help to improve computer performance and computer related operation, which includes processing related to communication over a communication network.” (Reply Br. 3 (emphasis omitted); *see also id.* at 4.) We disagree. Claim 1 does not recite “a communication network.” Claim 1 recites “receiving, by at least one processor communicatively coupled with at least one memory device, a plurality of orders . . . from computing devices.” Claim 1 does not recite *how* the processor is coupled to the memory device or *how* the processor receives orders from the computing devices. Appellant’s argument is not commensurate with the scope of the claim and is not persuasive.

Appellant, citing paragraphs 85, 89, and 117 of the Specification, further argues that “the claimed invention is directed to improvements in computer performance” because the “techniques . . . control[] the information being displayed on graphical user interfaces, which helps control of the amount of information being transmitted over the network and control computer workload.” (*Id.* at 5 (emphasis omitted).) We do not find this argument persuasive.

Paragraphs 85, 89, and 117 of the Specification do not discuss improving computer performance by controlling the amount of information transmitted over a network. Nor do they discuss any technical improvements in controlling computer workload. (*See Spec.* ¶¶ 85, 89, 117.) And, as discussed above, claim 1 does not even recite a network or how information is transmitted. Even if we agreed that the information provided by the method of claim 1 assists traders in processing information more quickly, that would not demonstrate a technical improvement. “[A] purportedly new arrangement of generic information that assists traders in processing information more quickly” does “not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem.” *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) [hereinafter “*IBG I*”]; *see BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1288 (Fed. Cir. 2018) (“[A]n improvement to the information stored by a database is not equivalent to an improvement in the database’s functionality.”).

Appellant seeks to analogize claim 1 to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). (Reply Br. 5.)

Appellant argues that “claim 1 clearly recites improvements to technology that are rooted in networking and computers.” (*Id.*) We disagree.

The claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result — a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258. As discussed above, Appellant’s claim 1 is silent as to how the processor or computing devices communicate. Claim 1 recites a method for receiving and displaying orders for trading. Appellant does not persuasively argue how this is analogous to overriding the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.

Appellant also seeks to analogize claim 1 to the claims in *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018). (Reply Br. 6.) Appellant argues that the “claimed subject matter is also drawn to an improved user interface which provides advantages over the prior art systems and improves the efficiency of electronic devices and electronic trading systems.” (*Id.*)

In *Core Wireless*, the claims were directed to improved functionality in a user interface. *Core Wireless*, 880 F.3d at 1362. Specifically:

Claim 1 of the ‘476 patent *requires* “*an application summary that can be reached directly from the menu,*” *specifying a particular manner by which the summary window must be accessed.* The claim further requires the application summary window list a limited set of data, “each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application.” This claim limitation restrains the type of data that can be displayed in the summary window. Finally, the claim recites *that the summary window “is displayed while the one or more*

applications are in an un-launched state,” a requirement that the device applications exist in a particular state. These limitations disclose a specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer.

Id. at 1362–63 (emphasis added).

As discussed above, even if we agreed that the information provided by the method of claim 1 assists traders in processing information more quickly, that would not demonstrate a technical improvement. Appellant does not persuasively argue why *Core Wireless* would lead to a different result. Moreover, claim 1 simply recites a generic “interface screen” displaying information in a recited format. In *IBG I*, where “[t]he method steps require ‘displaying’ a plurality of bid and offer indicators along a ‘scaled axis of prices,’ ‘receiving market information,’ displaying that information along the axis, and ‘displaying’ information pertaining to a user’s order,” the Federal Circuit determined that “[t]his essentially describes receiving information . . . and displaying that information. ‘[W]e have treated collecting information, including when limited to particular content (which does not change its character as information) as within the realm of abstract ideas.’” *IBG I*, 921 F.3d at 1092 (quoting *Elec. Power Grp.*, 830 F.3d at 1353). Therefore, we do not find Appellant’s argument persuasive.

Appellant also argues that “the Office Action fails to make any analysis or showing of any kind concerning preemption.” (Appeal Br. 10.)

We do not find Appellant’s preemption argument persuasive. “Where 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 Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

In view of the above, we determine that claim 1 is directed to receiving and displaying orders for trading, i.e., “commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations.” (See 2019 Guidance at 52.) And further in view of the above, we agree with the Examiner that claim 1 is directed to the abstract idea of certain methods of organizing human activity. (See Answer 6; see also 2019 Guidance at 52.)

Thus, under prong one of the two prong test in the 2019 Guidance, claim 1 recites an abstract idea; and, under prong two, additional elements in claim 1 do not “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” (See 2019 Guidance at 54.) As such, under step one of the *Alice* framework, claim 1 is directed to an abstract idea, and we move on to step two.

Step two of the *Alice* framework has been described “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*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

Here, Appellant argues that there has been no explicit finding as to “whether the claim includes a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the

field, which is indicative that an inventive concept is present.” (Reply Br. 6.)

Taking the claim elements separately, the functions performed by the generic “processor” and generic “computing devices” (including the generic “interface screen”) are purely conventional. (*See e.g.*, Spec. 10, l. 21 – 12, l. 2.) Receiving and displaying information are well-understood, routine, and conventional functions previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1356 (The claims “do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept”); *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.”).

Considered as an ordered combination, the generic processor and generic computing devices of Appellant’s claimed invention add nothing that is not already present when the limitations are considered separately. For example, claim 1 does not, as discussed above, purport to improve the functioning of the processor or computing devices themselves. Nor does it effect an improvement in any other technology or technical field. Instead, claim 1 amounts to nothing significantly more than an instruction to apply the abstract idea using a generic processor and generic computing devices performing routine computer functions. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 101.

With regard to dependent claims 2, 4–6, 8–10, and 13–15, Appellant argues that “the Office Action has failed to provide an analysis of each claim individually” and “does not even mention any specific dependent claim recitation whatsoever.” (Appeal Br. 9.)

The Examiner determines that dependent claims 2, 4–6, 8–10 and 13–15 simply “further narrow the abstract idea,” and “do not resolve the issues raised in the independent claim.” (Final Action 3; *see also* Answer 7–8.)

In the Appeal Brief, Appellant does not argue why such further narrowing would result in any dependent claim no longer being directed to receiving and displaying orders for trading, i.e., “commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations”; in other words, directed to the abstract idea of certain methods of organizing human activity. (*See* 2019 Guidance at 52.) Nor does Appellant argue why such further narrowing would result in the functions performed by the generic processor and generic computing devices no longer being purely conventional.

In the Reply Brief, Appellant argues, for the first time, that “[t]he claimed subject matter of claims 14 and 15 is drawn to an improved graphical user interface which provides advantages over the prior art systems.” (Reply Br. 8 (emphasis omitted).) Appellant did not separately argue dependent claims 14 and 15 in the Appeal Brief. “[T]he failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the

patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(iv). Nor is Appellant’s new argument responsive to a new argument raised in the Examiner’s Answer. Under 37 C.F.R. § 41.41(b)(2), we need not consider new arguments absent a showing of good cause. No showing was made. For these reasons, we need not, and do not, address Appellant’s new arguments. We note, however, that in *IBG I*, the fact that a claim “also recites sending an order by ‘selecting’ and ‘moving’ an order icon” did not change the “determination that the claims are directed to an abstract idea.” *IBG I*, 921 F.3d at 1092.

In view of the above, we are not persuaded that the Examiner erred in rejecting dependent claims 2, 4–6, 8–10, and 13–15 under § 101.

CONCLUSION

The Examiner’s rejection of claims 1, 2, 4–6, 8–10, and 13–15 under 35 U.S.C. § 101 is affirmed.

Specifically:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4–6, 8–10, 13–15	101	eligibility	1, 2, 4–6, 8–10, 13–15	

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