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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN HAMILTON BURRIS

Appeal 2019-006656
Application 15/258,534
Technology Center 3600

Before ADAM J. PYONIN, DAVID J. CUTITTA II, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant¹ requests a rehearing of the Decision on Appeal mailed June 26, 2020 (the “Decision”). *See* Request for Rehearing filed August 25, 2020 (the “Request”). We have reconsidered the Decision in light of Appellant’s arguments; however, we are not persuaded of any error therein.

¹ Herein, “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Steven B. Homes, Inc. Appeal Br. 1.

DISCUSSION

In the Decision, we affirmed the Examiner’s rejection of the claims pursuant to the U.S. Patent Office’s revised guidance on the application of 35 U.S.C. § 101. *See* Decision 11; *see also Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (Describing the two-step framework under 35 U.S.C. § 101, “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.”); USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”).

Independent claim 1 recites a “user device having . . . a device locator,” and “caus[ing] the user device to determine a current location of the at least one user device using the device locator.” In the Request, Appellant “submits that the Board misapprehended the device locator limitation in the claims, and therefore, should reconsider the affirmation of the rejection.” Request 3.

Footnote 3

The focus of the Request is regarding “footnote 3 on page 9 of the Decision, [in which] the Board, as understood, equates the claimed ‘device locator’ in claim 1 with ‘manually entering an address into a device locator.’” Request 3. Appellant contends “the Board has misapprehended the meaning of the claimed device locator within the context of the claim language. The meaning of the claims, when read properly in light of the Specification, does not encompass a user manually entering an address into a device locator.” *Id.* at 6.

The Request does not show we misapprehended or overlooked any points in rendering the Decision. *See* MPEP § 1214.03. The Decision included a footnote discussing a separate claim construction:

Separately, we note the claim, in light of the Specification, encompasses a user manually entering an address into a device locator. *See* Spec. ¶ 37 (“implementations of the device locator 23 may include, but are not limited to . . . any future developed system or method[”]); ¶ 53 (“property intake questions of the system 10 may be administered manually”).

Decision 9, n. 3.

This footnote did not supply a basis for the eligibility analysis. Rather, footnote 3 merely pointed out the breadth of the claims as a note *separate* from the decision. *See id.* (“Separately, we note . . .”). Our determination of ineligibility—in contrast with the footnote—was based on determining the device locator limitations were part of the recited abstract idea, or at most were used to automate steps normally performed by realtors or house sellers. *See* Decision 6, 9. The determination of ineligibility did not turn on whether the claim encompasses manual address entry.

Footnote 3 was supplemental to the Decision’s ultimate holding of patent eligibility. For clarity of the record we withdraw the alternative claim construction relating to manual data entry: we amend the decision by deleting footnote 3 on page 9. This amendment does not alter our decision upholding the Examiner’s eligibility rejection, as discussed further herein. *See* 37 CFR 41.52 (“The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing.”).

Eligibility

Regarding the analysis of the Decision with respect to the Guidance, Appellant does not show we misapprehend or overlooked any points in finding the claims are patent ineligible.

First, Appellant does not challenge our adoption of the Examiner’s determination, under Prong One of the Guidance, that the device locator limitations recite an abstract concept. *See* Decision 6 (“We find no error in the Examiner’s determination, as the Examiner has reasonably identified limitations of claim 1 (*see* Ans. 5, 6) that are ‘commercial or legal interactions.’”); Ans. 5, 6 (identifying the recited “cause the user device to determine a current location of a device of the at least one user device using the device locator,” as reciting certain methods of organizing human activity). The record before us does not show we misapprehend or overlooked any points in agreeing with the Examiner. *See* Decision 5–7; Guidance, 84 Fed. Reg. at 54 (“In Prong One, examiners should evaluate whether the claim recites a judicial exception, i.e., an abstract idea, a law of nature, or a natural phenomenon.”). Further, the Examiner’s analysis comports with similar analysis by our reviewing court. *Cf. Elec. Comm’n Techs., LLC v. ShoppersChoice.com, LLC*, 958 F.3d 1178, 1181 (Fed. Cir. 2020) (“Two of the six identified functions—monitoring the location of a mobile thing and notifying a party in advance of arrival of that mobile thing—amount to nothing more than the fundamental business practice of providing advance notification of the pickup or delivery of a mobile thing.”); *British Telecommunications PLC v. IAC/InterActiveCorp*, 813 F. App’x 584, 587 (Fed. Cir. 2020) (“We have previously held that tailoring the provision

of information to a user's characteristics, such as location, is an abstract idea.”).

Second, we are not persuaded we overlooked or misapprehended any points in determining that, even when analyzed under Prong Two, the device locator limitations of claim 1 do not “impose a meaningful limit on the judicial exception.” Decision 9. The Request's central argument—that the device locator limitations “do[] not include a user *manually* entering an address into a device locator” (Request 6, emphasis added)—is unresponsive to the Decision's determination that the disputed limitations “merely *automate[]* steps [and] do not improve the underlying computer” (Decision 9, emphasis added). Particularly, although the request acknowledges our determination (*see* Request 3), the request presents no arguments or reasoning to show it is in error. Nor does the Request challenge our determination that the device locator, defined in the Specification as encompassing “future developed” technologies, served to preempt the field. Decision 10, n. 5 (citing Spec. ¶¶ 32, 36, 37). Accordingly, we do not see any points that were misapprehended or overlooked when we “agree[d] with the Examiner that claim 1 does not integrate the judicial exception into a practical application.” Decision 10; Guidance, 84 Fed. Reg. at 54.

CONCLUSION

We modify the Decision to withdraw footnote 3 on page 9. We do not grant the request for rehearing, however, as we are not persuaded of error in the Decision. *See* 37 CFR 41.52.

DECISION SUMMARY

Outcome of Decision on Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Denied	Granted
1-4, 7-10, 13	101	Eligibility	1-4, 7-10, 13	

Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
1-4, 7-10, 13	101	Eligibility	1-4, 7-10, 13	
1-2, 7-8, 13	103	Thomas, Redstone, Desiderio, Marshall, Raveis		1-2, 7-8, 13
3, 4, 9, 10	103	Thomas, Redstone, Desiderio, Marshall, Raveis, Rankin		3, 4, 9, 10
Overall Outcome			1-4, 7-10, 13	

REHEARING DENIED