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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MIKKO VAANANEN

Appeal 2019-006774
Application 15/060,659
Technology Center 3600

Before BIBHU R. MOHANTY, BRUCE T. WIEDER, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

HUTCHINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 5, 7, 9, 10, 14, 16, 18, 19, 23, 25, and 27. An oral hearing was held on September 24, 2020. We have jurisdiction under 35 U.S.C. § 6(b).

¹ We use the term "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Our decision references Appellant's Appeal Brief ("Appeal Br.," filed June 13, 2019), Correction of Non-Compliant Appeal Brief ("Corrected Claims," filed July 2, 2019), Reply Brief ("Reply Br.," filed Sept. 13, 2019), and Published Specification (US 2017/0169407 A1, pub. June 15, 2017), and the Examiner's Answer ("Ans.," mailed Aug. 14, 2018) and Final Office Action ("Final Act.," mailed May 31, 2019). Appellant identifies the inventor as the real party in interest. See, e.g., Reply Br. 6.

We AFFIRM.

CLAIMED INVENTION

Appellant describes that the claimed invention relates “to the field of making online payments by integrating social networks and payment networks to a seamless network.” Spec. ¶ 1.

Claims 1, 10, and 19 are the independent claims on appeal. Claim 10, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

10. A method for transacting payments in an electronic social payment network, wherein,

[(a)] a customer account in said social payment network system sends a payment to a vendor via social network user account of said customer with a mobile social network app installed on the mobile phone of the customer and payment detail data is collected from the social network user account data of customer or vendor, and,

[(b)] a vendor account in said social payment network system receives a payment from a customer via social network user account of said vendor and payment detail data is collected from the social network user account data of the customer or vendor, and

[(c)] a currency payment from a first central bank currency to a second central bank currency is settled with a currency exchange within the said social payment network system without money being deposited to a commercial bank account or credit card, and payments are facilitated by social network messaging.

REJECTIONS

Claims 1, 5, 7, 9, 10, 14, 16, 18, 19, 23, 25, and 27 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 5, 10, 14, 19, and 23 are rejected under 35 U.S.C. § 103 as unpatentable over Doran (US 2012/0143761 A1, pub. June 7, 2012), Hahn-Carlson (US 2008/0086397 A1, pub. Apr. 10, 2008), Khilnani (US 2014/0279509 A1, pub. Sept. 18, 2014), and Pourfallah (US 2012/0239417 A1, pub. Sept. 20, 2012).

Claims 7, 9, 16, 18, 25, and 27 are rejected under 35 U.S.C. § 103 as unpatentable over Doran, Hahn-Carlson, Khilnani, Pourfallah, and further in view of Official Notice.

ANALYSIS

Patent-Ineligible Subject Matter

Appellant does not separately argue the claims. We select claim 10 as representative. Claims 1, 5, 7, 9, 14, 16, 18, 19, 23, 25, and 27 will stand or fall with claim 10. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework set forth 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 Corp.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to

one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends.

Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). This is “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.’” *Id.* at 217–18 (alteration in original).

The U.S. Patent and Trademark Office (the “USPTO”) published revised guidance on January 7, 2019 for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the “Revised Guidance”). That guidance revised the USPTO’s examination procedure with respect to the first step of the *Mayo/Alice* framework by (1) “[p]roviding groupings of subject matter that [are] considered an abstract idea; and (2) clarifying that a claim is not ‘directed to’ a judicial exception if the judicial exception is integrated into a practical application of that exception.” *Id.* at 50. The Revised Guidance, by its terms, “applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019.” *Id.* The USPTO issued further guidance on October 17, 2019, clarifying the Revised Guidance. USPTO, October 2019 Update: Subject Matter Eligibility (“October 2019 Update”), https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf.

Applying the Revised Guidance in rejecting the claims under 35 U.S.C. § 101, the Examiner determined that steps (a) through (c), as recited in claim 10, are directed to “sending and collecting data and settling payment,” which is a certain method of organizing human activity, i.e., an abstract idea. Final Act. 3; *see also* Revised Guidance, 84 Fed. Reg. at 52 (describing commercial interactions as a certain method of organizing human activity). The Examiner found that the additional elements include a “network computer” and “memory medium” to perform the steps of receiving, collecting, and settling, and an app installed on a mobile phone to perform the step of sending. *Id.*; *see also* claims 1, 19. The Examiner determined that the additional elements are recited “at a high-level of generality (i.e., as a generic processor performing generic computer functions) such that it amounts to no more than mere instructions to apply the exception using generic computer components.” *Id.* The Examiner determined that the generic computer components perform generic computer functions that are well-understood, routine and conventional. *Id.* at 4 (citations omitted). The Examiner, thus, concluded that the additional elements do not integrate the abstract idea into a practical application or amount to significantly more than the abstract idea. *Id.*

Step One of the Mayo/Alice Framework (Revised Guidance, Step 2A)

The first step in the *Mayo/Alice* framework, as mentioned above, is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the Revised Guidance (i.e., Step 2A), is a two-prong test. In Step 2A, Prong One, we look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas:

(1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (3) mental processes. Revised Guidance, 84 Fed. Reg. at 52. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, “that integrate the [judicial] exception into a practical application,” i.e., that 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 (“Step 2A, Prong Two”). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application do we conclude that the claim is “directed to” the judicial exception, e.g., an abstract idea. *Id.* If the claim is directed to an abstract idea, we then look to whether the claim “[a]dds a specific limitation or combination of limitations” that is not “well-understood, routine, conventional activity in the field” or simply “appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception” (“Step 2B”). *Id.* at 56.

The Federal Circuit has explained that “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.’” *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.

We are not persuaded by Appellant’s arguments that the claims are not directed to an abstract idea. Appeal Br. 6; Reply Br. 2–3. Here, the Specification is titled “METHOD AND MEANS FOR SOCIAL NETWORK PAYMENTS.” Appellant’s Specification describes that even though online purchases have become more popular, banks often decline completely valid credit card transactions when those transactions are conducted on-line due to security concerns. Spec. ¶¶ 2–3. Another problem with online payments is they are very expensive, particularly when the sale or withdrawal is in another currency. *Id.* ¶ 3. Payments through social websites like Facebook “incurs both wire and/or credit card fees.” *Id.* ¶ 5. The Specification describes that payments via Facebook Messenger are “nothing but glorified credit card transactions, as the money is drawn via the standard payment methods of [the] credit card/bank account.” *Id.* PayPal allows sending a money order to e-mail, but this incurs normal bank fees, credit card fees, and PayPal charges, and provides almost no counterparty trust authentication. *Id.* ¶ 6.

With this context in mind, Appellant’s claim 10 recites a method for transacting payments involving a customer, a vendor, and a currency exchange. The method recites the following three steps: (a) “a customer account . . . sends a payment to a vendor . . . and payment detail data is collected . . .”; (b) “a vendor account . . . receives a payment from a customer . . . and payment detail data is collected . . .”; and (c) “a currency payment from a first central bank currency to a second central bank currency

is settled . . . without money being deposited to a commercial bank account or credit card”.

We agree with the Examiner that these limitations, when given their broadest reasonable interpretation, recite a method of sending and collecting data and settling payment, which is a fundamental economic practice and a commercial interaction. A fundamental economic practice and commercial interaction are two of the specified certain methods of organizing human activity, i.e., an abstract idea. *See Revised Guidance*, 84 Fed. Reg. at 52. *Step One of the Mayo/Alice Framework (Revised Guidance, Step 2A, Prong Two)*

Having concluded that claims recite a judicial exception, i.e., an abstract idea (Step 2A, Prong One), we next consider whether the claims recite additional elements that integrate the judicial exception into a practical application (Step 2A, Prong Two). *See Revised Guidance*, 84 Fed. Reg. at 54.

Beyond the abstract idea, independent claim 10 additionally recites “electronic social payment network,” “social payment network system,” “mobile social network app,” “mobile phone,” “currency exchange,” and “social network messaging.” However, these additional elements are recited and described at a high level of generality. *See, e.g.*, Spec. ¶¶ 39–43. *See* 84 Fed. Reg. at 55; *see also* October 2019 Guidance Update, 11–12 (recitation of generic computer limitations for implementing the abstract idea “would not be sufficient to demonstrate integration of a judicial exception into a practical application”), *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.”).

Appellant argues that the claimed invention “describe[s] payment processing technology for multicurrency payments configured to operate with a mobile social network app on the smartphone of the user”; is “limited to a mobile social network app implementation”; “[t]he payment is facilitated by social network messaging”; and has “very specific . . . software implementation.” Appeal Br. 6. Similarly, in the Reply Brief, Appellant contends that

[t]he invention is integrated into a practical application whereby consumers and businesses process the payment by the consumer sending the payment via his mobile social network app and social network account, for example Facebook app and account, and a vendor account is used to receive the payment. Both the claims and the description provide meaningful limits to the mobile social app-based payment system.

Reply Br. 2. However, these additional limitations, considered alone and as an ordered combination, at best provide a particular technological environment (i.e., mobile social network app) or field of use (i.e., multicurrency payments made with social network messaging). *See Revised Guidance*, 84 Fed. Reg. at 55.

Moreover, claim 10 recites that the customer account “sends” a payment to a vender “via social network user account of said customer” and the vendor account “receives” a payment from a customer “via social network user account of said vendor.” Claim 10 also recites that payment detail data is collected “from the social network user account data of customer or vendor.” But these limitations specify the sources and content of the information being processed for settling the payment. And “[a]s many cases make clear, 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*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

In contrast to Appellant’s assertion that the claimed invention “is very specific about the software implementation of the invention” (Appeal Br. 6), claim 10 does not recite technological implementation details for any of the claimed limitations. For example, limitation (a) recites that the customer account “sends” a payment and data “is collected,” limitation (b) recites that the vendor account “receives” a payment and data “is collected,” and limitation (c) recites that a currency payment “is settled” “without money being deposited to a commercial bank account or credit card, and payments are facilitated by social network messaging.” Claim 10 does not recite *how* the method sends a payment, *how* the method collects data, *how* the method receives a payment, *how* the method settles a currency payment without money being deposited to a commercial bank account or credit card, or *how* the method “facilitates” payments. For each of the steps, claim 1 merely recites functional results to be achieved. *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (“[T]he claim language here provides only a result-oriented solution with insufficient detail for how a computer accomplishes it. Our law demands more.”).

Appellant further argues that the claimed invention “benefits the global consumer” (Appeal Br. 6), allows “currencies [to] become irrelevant to the global consumer” (Reply Br. 3), and provides an “improvement in ease of use and the savings in bank service fees” (*id.*). Appellant’s claimed invention may well provide benefits to the global consumer. However, we are not persuaded that these improvements constitute a technological

improvement, as opposed to an improvement to the abstract idea. In particular, Appellant does not persuade us that any additional element or combination of additional elements recited in the claim improves computer functionality, technology and/or a technical field, or that otherwise integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Revised Guidance.²

We conclude, for the reasons outlined above, that the claim recites a certain method of organizing human activity, i.e., an abstract idea, and that the additional elements recited in the claim do no more than generally link the abstract idea to a particular technological environment and use generic computers and components as tools to implement the abstract idea.

Therefore, the additional elements do not integrate the abstract idea into a practical application. Accordingly, we are not persuaded that the Examiner erred in determining that the claim, as a whole, is directed to an abstract idea.

Step Two of the Mayo/Alice Framework (2019 Revised Guidance, Step 2B)

Having determined that claim 10 is directed to an abstract idea, we consider whether the claim includes any additional elements, alone or in combination, that are not well-understood, routine, conventional activity in the field. Revised Guidance, 84 Fed. Reg. at 56.

² The Revised Guidance references MPEP § 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. Revised Guidance, 84 Fed. Reg. at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

This step of the analysis considers additional elements, as limitations reciting a judicial exception cannot supply an inventive concept. *See Mayo*, 566 U.S. at 72–73 (requiring “a process that focuses upon the use of a natural law also contain *other* elements or a combination of elements, sometimes referred to as an ‘inventive concept,’ sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself” (emphasis added)); *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”); *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring) (“[A]nd *Berkheimer* . . . leave[s] untouched the numerous cases from [the Federal Circuit] which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.”), *cert. denied*, 140 S. Ct. 911 (2020).

Thus, to the extent Appellant argues that the combination of steps, such as limitations (a)–(c) of claim 10, are not well-understood, routine, or conventional in the field of payment processing, that argument is not persuasive at least because those limitations are part of the abstract idea itself. *See Reply Br. 3* (asserting that “[t]he invention is a technological breakthrough in consumer payment processing”). As set forth above, the only additional elements recited by the claims are elements described in the Specification at a high level of generality. *See Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”).

Here, Appellant has not identified any additional elements recited in the claim that, individually or in combination, provides significantly more than the abstract idea.

We are not persuaded, on the present record, that the Examiner erred in rejecting claim 10 under 35 U.S.C. § 101. Therefore, we sustain the Examiner's rejection of 10 under 35 U.S.C. § 101, and claims 1, 5, 7, 9, 14, 16, 18, 19, 23, 25, and 27, which fall with claim 10.

Obviousness

Independent claims 1, 10, and 19, and Dependent Claims 5, 14, and 23

Appellant does not separately argue the claims. We select claim 1 as representative. Claims 5, 10, 14, 19, and 23 will stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant argues that the Examiner erred in rejecting independent claims 1, 10, and 19, because Pourfallah's medical insurance claims "are notoriously domestic, private single currency transactions, which would not be combined to a social network, or facilitated by social network messaging." Appeal Br. 7; *see also* Reply Br. 5. Appellant's argument is not persuasive, at least because the Examiner does not propose bodily incorporating Pourfallah's medical insurance claims into the social network of Doran. Instead, the Examiner determines that it would have been obvious to modify Doran's invention so that the app is installed on the mobile phone, as taught by Pourfallah. Ans. 11.

Appellant argues that

[b]ased on paragraph 137 of Pourfallah et al., and Doran, Hahn-Carlson, Khilnani et al., the multicurrency payment of the invention made by a

US or EU tourist with Japanese Yen in Tokyo to purchase a double espresso via a social network app, and pay to the social network account of the café with a social network message is not only non-obvious, it is indeed unimaginable.

Appeal Br. 7; *see also* Reply Br. 5–6. Appellant’s argument is not persuasive of Examiner error, at least because it does not address the findings and rationales set forth by the Examiner in rejecting the claims. The Examiner does not rely on paragraph 137 of Pourfallah to teach a U.S. or E.U. tourist with Japanese Yen in Tokyo to purchase a double espresso via a social network app, and pay to the network account of the café with the social network message. *See* Ans. 11.

Appellant’s assertion that the combination of Doran, Khilnani, Hahn-Carlson, and Pourfallah does not teach or suggest a “mobile social network app that can perform multicurrency transactions from the mobile phone using multiple central bank currencies without depositing to bank account, and where social network messaging to and from the app facilitates . . . payments” (Appeal Br. 8), is not persuasive, at least because it does not identify or explain any alleged errors in the findings and rationales set forth by the Examiner. *See* Appeal Br. 8; *see also* Reply Br. 5.

In the Reply Brief, Appellant presents arguments for the first time that are not responsive to an argument raised in the Examiner’s Answer. *See* Reply Br. 4–5. Appellant has not shown good cause for not presenting these arguments in the Appeal Brief. Therefore, we will not consider Appellant’s belated argument. *See* 37 C.F.R. § 41.41(b)(2) (“Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner’s answer . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown.”)

Accordingly, we sustain the Examiner's rejection of independent claim 1 under 35 U.S.C. § 103, we also sustain the rejections of claims 5, 10, 14, 19, and 23, which fall with claim 1.

Dependent Claims 7, 9, 16, 18, 25, and 27

Appellant does not separately argue the rejection of dependent claims 7, 9, 16, 18, 25, and 27. Therefore, we affirm the rejection of claims 7, 9, 16, 18, 25, and 27 under 35 U.S.C. § 103 for the same reasons described above with respect to the independent claims.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1, 5, 7, 9, 10, 14, 16, 18, 19, 23, 25, 27	101	Eligibility	1, 5, 7, 9, 10, 14, 16, 18, 19, 23, 25, 27	
1, 5, 10, 14, 19, 23	103	Doran, Hahn-Carlson, Khilnani, Pourfallah	1, 5, 10, 14, 19, 23	
7, 9, 16, 18, 25, 27	103	Doran, Hahn-Carlson, Khilnani, Pourfallah, Official Notice	7, 9, 16, 18, 25, 27	
Overall Outcome			1, 5, 7, 9, 10, 14, 16, 18, 19, 23, 25, 27	

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). *See* 37 C.F.R. § 41.50(f) (2018).

AFFIRMED