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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT ALVARADO, MATTHEW WAPNICK, MARK
WAPNICK, and JASON WOOD

Appeal 2020-001156
Application 14/341,306
Technology Center 3600

Before ALLEN R. MacDONALD, MAHSHID D. SAADAT, and
IRVIN E. BRANCH, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from a Final Rejection of claims 37–42. Appeal Br. 12. Appellant has cancelled claims 1–36. Final Act. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse, and we enter a new ground of rejection.

¹ Appellant identifies the real party in interest is the inventor of the application, Robert V. Alvarado, Jr. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claim 37 is illustrative of the claimed subject matter (formatting and bracketed material added):

37. A method for managing a remote conference having a plurality of cases and a plurality of participants, comprising:

[A.] providing a conferencing network wherein the conferencing network includes a moderator computer, a plurality of remote computers, the plurality of remote computers and moderator computer interconnected via a management server;

[B.] wherein the plurality of participants comprises:

(1) a judge participant who is always an active participant in each of the plurality of cases,

(2) one or more representative participants associated with each case of the plurality of cases scheduled for inclusion in the conference,

(3) a moderator participant who is a passive but controlling participant who designates whether the representative participants are active or passive participants, and

(4) public participants who are always passive participants;

[C.] wherein each of the plurality of participants accesses the management server by using one of the plurality of remote computers;

[D.] wherein the management server designates a case from the plurality of cases as a selected case;

[E.] wherein the management server compares, for the selected case, the participants accessing the remote conference with a predefined set of potential participants for the selected case to determine:

(1) the participants that have appeared,

(2) the participants who were scheduled to appear but have not appeared, and

(3) additional participants;

[F.] wherein the management server displays appearance information for the selected case on the moderator computer;

[G.] wherein the moderator, based on appearance information for the selected case; designates the selected case as the active case, if all of the set of predefined potential participants have appeared, wherein the representative participants of the predefined set of potential participants associated with the selected case are designated as active participants able to communicate with the judge; and

[H.] wherein the moderator instructs the management server to designate another case from the plurality of cases as the selected case, if less than all of the set of predefined potential participants have appeared.

REFERENCE²

The Examiner relies on the following reference:

Name	Reference	Date
Ramachandran	US 2011/0141951 A1	June 16, 2011

REJECTIONS

A.

The Examiner rejects claims 37–42 under 35 U.S.C. § 103 as being unpatentable over Ramachandran. Final Act. 3–6.

² All citations herein to patent and pre-grant publication references are by reference to the first named inventor only.

We select claim 37 as the representative claim for this rejection. The contentions discussed herein as to claim 37 are determinative as to this rejection. Therefore, except for our ultimate decision, we do not address the merit of the § 103 rejection of claims 38–42 further herein.

B.

We reject *infra* claims 37–42 under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more, i.e., the claimed invention is directed to patent-ineligible subject matter.

OPINION

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner has erred. Appellant’s contentions we discuss are determinative as to the § 103 rejection on appeal. Therefore, Appellant’s other contentions are not discussed in detail herein.

A.

The Examiner determines as to steps B and C of claim 37 that Ramachandran discloses:

wherein the plurality of participants comprises: (1) a judge participant who is always an active participant in each of the plurality of cases, (2) one or more representative participants associated with each case of the plurality of cases scheduled for inclusion in the conference, (3) a moderator participant who is a passive but controlling participant who designates whether the representative participants are active or passive participants, and (4) public participants who are always passive participants

(Ramachandran [0027] [0062] where the host may . . . *selectively mute and/or cut audio to participants by ID . . . and/or by group . . . [0062]* and the

groups are considered to allow for grouping of cases, or other participants, such as judges, who may be designated as active throughout the conference, and further, claim scope is not limited by claim language that does not require steps to be performed, such as this limitation, and therefore, this limitation receives little patentable weight);

wherein each of the plurality of participants accesses the management server by using one of the plurality of remote computers

(Ramachandran [0028]-[0031] and Fig. 1 *The participants utilizing the communication devices 21-24 may login to the teleconferencing application 106 and/or may download features a tool 106a-e of the teleconferencing application 106 [0031] where application 106 is on server 90*)[.]

Final Act. 3–4 (formatting added).

B.

Appellant contends that the Examiner erred in rejecting claim 34 under 35 U.S.C. § 103 because as to steps B and C:

First, nowhere in Ramachandran does the disclosure teach a judge participant, nor a judge participant who is always an active participant in each of a plurality of cases. No resemblance of this role is defined in Ramachandran because in Ramachandran there would be no need for a role where someone is always an active participant in every matter of that day. Any modification to Ramachandran would merely be a reconstruction of Applicant's invention with Ramachandran by using the Applicant's application as a template.

Pursuant to MPEP § 2142, "impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." It appears here that the Examiner has relied upon inappropriate hindsight in making her obviousness determination as Ramachandran does not appear to teach, suggest, or even motivate a person of ordinary skill in the

art to modify this reference. The examiner simply makes a conclusory statement comparing the selective muting and/or cutting of audio to participants by ID . . . and/or by group the “grouping of cases, or other participants, such as judges, who may be designated as active throughout the conference.”

However, “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 127 S.Ct 1727, 1741 (2007) (citing *In re Khan*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The examiner has not pointed to any language in the prior art or articulated any reasoning with some rational underpinning indicating that it would be obvious for a person having ordinary skill in the art to modify Ramachandran to come up with a judge participant who is always an active participant in each of a plurality of cases in a court’s docket.

. . .

Further, nowhere in Ramachandran does the reference disclose a public participant, nor does Ramachandran define a role that is always a passive participant. Additionally, the examiner does not mention the role of a passive participant or a public participant in her rejection. As stated above, it once again appears that the examiner has relied upon inappropriate hindsight in making her obviousness determination as Ramachandran does not teach, suggest, or even motivate a person of ordinary skill in the art to modify Ramachandran to add a public participant that cannot participate in a conference. Also, as stated above, the cited language from Ramachandran also does not have to do with a public participant role nor does it the show a fixed participation privilege of which that role takes on throughout a case, but rather, pertains to an action of muting and/or cutting audio to arbitrary participants.

Appeal Br. 14–15.

C.

As articulated by the Federal Circuit, the Examiner's burden of proving non-patentability is by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (“preponderance of the evidence is the standard that must be met by the PTO in making rejections”). “A rejection based on section 103 clearly must rest on a factual basis[.]” *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). “The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *Id.* We conclude the Examiner's analysis fails to meet this standard because the Examiner's determination that Ramachandran discloses step C (“each of the plurality of participants accesses”) fails to account for the impact of the active/passive/controlling limitations set forth in step B. The Examiner's analysis treats the limitations of step B in a vacuum without regard to the impact those limitation have on subsequent steps. Further, contrary to the Examiner's determination that step B is one where “claim scope is not limited by claim language that does not require steps to be performed,” we determine that the limitations set forth in step B require that in step C the access by each participant be specifically limited as set forth in step B.

D.

We conclude, consistent with Appellant's arguments that there is insufficient articulated reasoning to support the Examiner's finding that Ramachandran discloses the argued steps B and C of claim 37. Therefore, we conclude that there is insufficient articulated reasoning to support the

Examiner's final conclusion that claim 37 would have been obvious to one of ordinary skill in the art.

E.

Should there be further prosecution before the Examiner, we recommend the Examiner evaluate the effect under 35 U.S.C. § 103 of the known practices of a court room. Appellant's Briefing throughout acknowledges that such known practices are the template for the claimed invention. For example:

The present invention was specifically created to operate in a court environment and has been structured according to the unique needs of how a courtroom's daily docket operates.

At the beginning of a court's daily docket, attorneys will typically show up before the judge enters the courtroom does and check in with the clerk. Next, they will take a seat in what is known as the gallery. At this stage the attorneys may not know what time their case will be called. Once the attorney's specific case has been called by the judge, the attorney must be ready to appear before the judge on behalf of the client. Once attorneys are done his or her appearance before the judge, he or she may either leave or remain in the gallery if he or she has another case to argue that day.

Additionally, most of the time, members of the public may attend court hearings and observe the daily docket from the gallery. Without replicating the court environment by establishing the roles of each individual that participates in that environment, a web conferencing system would never be as effective because the courts are extremely backlogged and busy.

The claim limitations stated above has four main elements that define the type of participants that exist in the claimed method and ***are specifically tailored to simulate how a court works in real life.*** First, [it] is the judge participant who is defined to always be an active participant in each of the plurality of cases. In other words, the judge will always be active because the judge needs to be able to speak in every case of the day.

Appeal Br. 12–13 (emphasis added).

F. NEW GROUNDS OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b), we reject claims 37–42 under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter.

F.1. Section 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.

However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[L]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611);

mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citation omitted) (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second part of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an

abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

F.2. USPTO § 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).³ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first look to whether the claim recites:

(1) 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) (“Step 2A, Prong One”); and

³ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁴

2019 Revised Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we 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.

2019 Revised Guidance, 84 Fed. Reg. at 52–56.

F.3. Panel’s Analysis

F.3.a. 2019 Revised Guidance Step 2A, Prong 1

Our review determines that claim 37 recites managing legal interactions in a courtroom setting, including the following limitations:

A method for managing a . . . conference having a plurality of cases and a plurality of participants, comprising:

[A.] *providing* . . . conferencing . . . ;

⁴ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

[B.] wherein the plurality of participants comprises:

- (1) a judge participant who is always an active participant in each of the plurality of cases,
- (2) one or more representative participants associated with each case of the plurality of cases scheduled for inclusion in the conference,
- (3) a moderator participant who is a passive but controlling participant who designates whether the representative participants are active or passive participants, and
- (4) public participants who are always passive participants;

[C.] wherein each of the plurality of participants *accesses* the [conference];

[D.] . . . *designat[ing]* a case from the plurality of cases as a selected case;

[E.] . . . *compar[ing]*, for the selected case, the participants accessing the . . . conference with a predefined set of potential participants for the selected case to determine:

- (1) the participants that have appeared,
- (2) the participants who were scheduled to appear but have not appeared, and
- (3) additional participants;

[F.] . . . *display[ing]* appearance information for the selected case . . . ;

[G.] wherein the moderator, based on appearance information for the selected case; *designates* the selected case as the active case, if all of the set of predefined potential participants have appeared, wherein the representative participants of the predefined set of potential participants associated with the selected case are designated as active participants able to communicate with the judge; and

[H.] wherein the moderator . . . *designate[s]* another case from the plurality of cases as the selected case, if less than all of the set of predefined potential participants have appeared.

Claim 37 (emphasis, formatting, and bracketed material added).

We conclude that these limitations of claim 37 *recite* a series of steps for managing a human conference in a courtroom procedure (i.e., a legal interaction (or more broadly for managing personal behavior or interactions between people)); and *a legal interaction* (or more broadly managing personal behavior or interactions between people) is one of certain methods of organizing human activity identified in the abstract idea groupings of the 2019 Revised Guidance. 84 Fed. Reg. at 52. Thus, claim 37 recites an abstract idea.

F.3.b. 2019 Revised Guidance Step 2A, Prong 2

Having determined that claim 37 *recites* an abstract idea, we now turn to whether claim 37 *is directed to* that abstract idea, or instead integrates the judicial exception into a practical application.

Beyond the abstract ideas discussed above, the only additional limitations are that (a) the method steps of the abstract idea are performed by a server, a mediator computer, and remote computers, and (b) a computer network is used in the conferencing method steps. However, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 222–23. The same is true as to use of a generic computer network to communicate among the conferencing parties and their server, mediator computer, and remote computers.

We determine that as to claim 37, the claimed invention does not represent a technological improvement in the operation of the claimed system. We conclude that claim 37 does not integrate the judicial exception into a practical application. We determine claim 37 does not recite:

- (i) an improvement to the functioning of a computer;
- (ii) an improvement to another technology or technical field;
- (iii) an application of the abstract idea with, or by use of, a particular machine;
- (iv) a transformation or reduction of a particular article to a different state or thing; or
- (v) other meaningful limitations beyond generally linking the use of the abstract idea to a particular technological environment.

See MPEP §§ 2106.05(a)–(c), (e)–(h). We determine that claim 37 is ***directed to*** a judicial exception, and does not integrate the judicial exception into a practical application.

F.3.c. 2019 Revised Guidance Step 2B

The generic teleconferencing between the parties in claim 37 is well-understood, routine, and conventional components or functions. The USPTO has determined that a specification may support a finding that additional elements are well-understood, routine, and conventional. The Specification expressly discloses that teleconferencing is know.

Teleconferencing can be an effective way to conduct meetings between multiple remotely located parties while avoiding the time and expense of travel. Many businesses have offices scattered across a wide geographical area, and often several employees may work closely together on a task while separated by thousands of miles. With teleconferencing, multiple

employees can collaborate on a single task as if they were in the same room, regardless of their geographic location. While commonly referred to as teleconferencing, some collaborative conference systems may allow conferencing via typed text, such as a chat room, audio, such as a phone conference, or even video, such as a video chat room.

Spec. ¶ 2. The Specification at paragraph 3 speaks further to “current conferencing systems” and “existing conferencing systems.”

As to the claimed “network,” receiving or transmitting data over a network is well-understood, routine, and conventional. *Intellectual Ventures v. Symantec Corp.*, 838 F.3d 1307, 1321 (Fed. Cir. 2016) (utilizing an intermediary computer to forward information). Further, as to the “server” and “computers,” mere recitation of a processor or computer alone is insufficient. *E.g., Alice*, 573 U.S. at 222–23. Therefore, claim 37 fails to provide an inventive concept beyond the abstract idea, whether the additional limitations are considered individually or in combination.

We determine that in addition to the abstract idea, claim 37 recites only well-understood, routine, conventional elements/functions/combination of elements and/or functions previously known in the remote conferencing industry. We determine that beyond the abstract idea, the claims do not recite:

- (vi) a specific limitation other than what is well-understood, routine, conventional activity in the field or unconventional steps that confine the claim to a particular useful application.

See MPEP § 2106.05(d).

F.3.d. Claims 38–42

As to claims 38–42, we conclude that they similarly *recite* a series of steps for managing a human in a courtroom procedure (i.e., a legal interaction (or more broadly for managing personal behavior or interactions between people)); and *a legal interaction* (or more broadly managing personal behavior or interactions between people) is one of certain methods of organizing human activity identified in the 2019 Revised Guidance, and, thus, an abstract idea. 84 Fed. Reg. at 52. For substantially the same reasons discussed above, we do not find that these claims recited additional elements integrating the identified abstract idea into a practical applications or amounting to significantly more than the identified abstract idea.

CONCLUSION

The Appellant has demonstrated the Examiner erred in rejecting claims 37–42 as being unpatentable under 35 U.S.C. § 103.

The Examiner’s rejections of claims 37–42 as being unpatentable under 35 U.S.C. § 103 are **reversed**.

We newly reject claims 37–42 under 35 U.S.C. § 101 as directed to patent ineligible subject matter without significantly more.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed	New Ground
37-42	103	Ramachandran		37-42	
37-42	101	Eligibility			37-42
Overall Outcome				37-42	37-42

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

REVERSED; 37 C.F.R. 41.50(b)