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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY J. BOSS, RICK A. HAMILTON II, JAMES R. KOZLOSKI, BRIAN M. O'CONNELL, and CLIFFORD A. PICKOVER

Appeal 2020-002166
Application 14/951,916¹
Technology Center 3600

Before JOSEPH A. FISCHETTI, CYNTHIA L. MURPHY, and AMEE A. SHAH, *Administrative Patent Judges*.

FISCHETTI, *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, 5–12, 14 and 17-20. Claims 2–4, 13, 15 and 16 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ Appellant identifies International Business Machines Corporation as the real party in interest. (Appeal Br. 2.)

THE INVENTION

Appellant states “[t]he disclosure relates generally to electric vehicles and more specifically to managing an exchange of an electric vehicle having an insufficient battery charge to reach a user-desired destination with another electric vehicle that has sufficient battery charge to reach the user-desired destination.” (Spec. ¶ 1.)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer-implemented method for managing an electric vehicle exchange, the computer-implemented method comprising:

selecting, by a computer, an available electric vehicle having a highest exchange score to perform an exchange at a selected charging station with another electric vehicle that has an insufficient battery charge level to reach a travel destination of the another electric vehicle;

responsive to the computer determining that a current battery charge level of the available electric vehicle is sufficient to reach the travel destination of the another electric vehicle, determining, by the computer, whether the exchange will allow the available electric vehicle to reach a travel destination of the available electric vehicle;

responsive to the computer determining that the exchange will allow the available electric vehicle to reach the travel destination of the available electric vehicle, sending, by the computer, routing information via a network to a navigation system of the available electric vehicle to the selected charging station;

determining, by the computer, whether a user of the available electric vehicle agrees to the exchange at the selected charging station;

receiving, by the computer, the travel destination from a navigation system of the another electric vehicle via the network;

determining, by the computer, a current battery charge level of the another electric vehicle based on data received from a sensor system of the another electric vehicle; and
predicting, by the computer, a travel distance of the another electric vehicle at the current battery charge level of the another electric vehicle.

THE REJECTION

The following rejection is before us for review.²

Claims 1, 5–12, 14 and 1720³ are rejected under 35 U.S.C. § 101 because the claimed invention is directed to an abstract idea without significantly more.

FINDINGS OF FACT

We adopt the Examiner's findings as set forth on pages 3–5 and 11–13 in the Final Office Action⁴ and on pages 3–11 in the Examiner's Answer, concerning only the 35 U.S.C. § 101 rejection.

ANALYSIS

35 U.S.C. § 101 REJECTION

We affirm the rejection of claims 1, 5–12, 14, and 17–20 under 35 U.S.C. § 101.

² The Examiner withdrew the rejection of claims 1, 5–12, 14, and 17–20 under 35 U.S.C. § 103(a). (Answer 3).

³ The status of claims on appeal are based on those submitted in the After Final Response dated June 18, 2019 which were entered for purposes of appeal in the Advisory Action dated July 18, 2019.

⁴ All references to the Final Office Action refer to the Final Office Action mailed on May 3, 2019.

The Appellant argues claims 1, 6–12, 14, and 17, 19, 20 as a group. (Appeal Br. 8.) We select claim 1 as the representative claim for this group, and so the remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2019).

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 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 Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. 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 id.* 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 water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); 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 Supreme 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 Supreme 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.* (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 step 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.*

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) (“Guidance”).⁵ “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
- (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”).⁶

Guidance, 84 Fed. Reg. at 52–55.

⁵ 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).

⁶ 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* Guidance - Section III(A)(2), 84 Fed. Reg. at 54–55.

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.

Guidance, 84 Fed. Reg. at 52–56. The U.S. Court of Appeals for 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.’” *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 Enfish*, 822 F.3d at 1335–36.

In so doing, as indicated above, 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 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.” Guidance, 84 Fed. Reg. at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

Accordingly, we find that the Specification states:

Typically, a single individual usually rents a rental vehicle from a rental company and that same individual must return that particular rental vehicle to the rental company. This may present a problem for renters when renting electronic vehicles that have limited travel range due to battery charge. Range, as is commonly referred to in electric vehicle literature, refers to the remaining distance an electric vehicle can travel with the amount of battery charge the electric vehicle currently has on board.

(Spec. ¶ 3.)

The Examiner finds that claim 1 recites a method of “managing electric vehicle exchange (emphasis omitted)” and hence, “organizing human activity.” (Final Act. 3.) The Examiner finds in support of this finding that:

Appellant’s Specification ¶¶76-¶78 and ¶81 shows managing relationship between a rental car user and rental services as for example “ensure a useful exchange of electric vehicles, which is beneficial for both rental parties involved in the exchange and the electric vehicle rental service . . . initiating an exchange of batteries between the electric vehicles by the users based on the determining steps” which shows there’s an exchange an interaction between people for vehicle rental service.

(Ans. 4.)

The preamble states claim 1 is “for managing an electric vehicle exchange.”

Claim 1 recites in pertinent part:

selecting, . . . an available electric vehicle having a highest exchange score to perform an exchange at a selected charging station with another electric vehicle that has an insufficient battery charge level to reach a travel destination of the another electric vehicle;

responsive to . . . determining that a current battery charge level of the available electric vehicle is sufficient to reach the

travel destination of the another electric vehicle, determining, . . . whether the exchange will allow the available electric vehicle to reach a travel destination of the available electric vehicle;

responsive to . . . determining that the exchange will allow the available electric vehicle to reach the travel destination of the available electric vehicle, sending, . . . routing information via a network to a navigation system of the available electric vehicle to the selected charging station; determining . . . whether a user of the available electric vehicle agrees to the exchange at the selected charging station; receiving . . . the travel destination from a navigation system of the another electric vehicle via the network; determining . . . a current battery charge level of the another electric vehicle based on data received from a sensor system of the another electric vehicle; and

predicting . . . a travel distance of the another electric vehicle at the current battery charge level of the another electric vehicle.

Thus, all this intrinsic evidence shows that claim 1 recites managing an exchange of an electric vehicle having an insufficient battery charge to reach a user-desired destination with another electric vehicle that has sufficient battery charge to reach the user-desired destination. This is consistent with the Examiner’s determination. Personal behavior or interactions are apparent in claim limitations such as, “determining, . . . whether the exchange will allow the available electric vehicle to reach a travel destination of the available electric vehicle”; and “determining . . . whether a user of the available electric vehicle agrees to the exchange at the selected charging station.” The user-desired destination is also governed by human behavior. Managing personal behavior or interactions between people is one of certain methods of organizing human activity— a judicial exception. Guidance, 84 Fed. Reg. at 52.

Turning to the second prong of the “directed to” test, claim 1 only generically requires “a computer,” “electric vehicle,” “a charging station”

and “a sensor system.” These components are described in the Specification at a high level of generality. (See Spec. ¶¶ 15–24, Fig. 1.) We fail to see how the generic recitations of these most basic computer components and/or of a system so integrate the judicial exception as to “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. 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 assertedly 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.”).

Thus, we find that claim 1 recites the judicial exception of a certain method of organizing human activity that is not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to driver behavior using an electric vehicle, does not make them any less abstract. See *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that 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.”).

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas/judicial exceptions, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements 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 (quoting *Mayo*, 566 U.S. at 72–73).

Concerning this step the Examiner finds the following:

The claim[s] do not include additional elements that are sufficient to amount to significantly more than the judicial exception because, as discussed above, the additional elements amount to mere instructions to apply the exception using a generic computer. Furthermore, the sending of routing information through a network to a navigation system is extra-resolution activity that the courts have found to be well understood routine and conventional activity.

Final Act. 12–13.

We agree with the Examiner. “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to select, determine, send, receive, and apply decision criteria to 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, 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. The claims do not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g.*, Spec. ¶¶ 15–24, Fig. 1). Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea 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 225–226.

Considered as an ordered combination, the computer components of Appellant’s claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (selecting, determining (successively), receiving, and predicting) and storing 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.

We have reviewed all the arguments Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (Appeal Br. 7–28, Reply Br. 2–8.) We find that our analysis above substantially covers the substance of all the arguments (including those made in support of claims 5 and 18), which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellant argues:

a series of computer-performed steps are recited that do not involve any ‘human activities’ or ‘people activities’ at all, and therefore there is no organizing[□] of ‘*human* activities’ recited in Claim 1 since human activities are not structured or formed into a coherent unity by any claimed feature.

(Appeal Br. 8.)

We disagree with Appellant because as the Examiner finds, the Specification and claim steps “show[] there’s an exchange [or] an interaction between people for vehicle rental service.” (Ans. 4.) That is, the claimed predicting, “a travel distance of the another electric vehicle at the current battery charge level of the another electric vehicle,” is the result of the driving behavior taken relative to electric vehicle range. Using Appellant’s words, “coherent unity” (Appeal Br. 8), occurs by virtue of coordinating the exchange between the available vehicle and the another vehicle for the purpose of meeting the user’s requirements that derive from the user’s driving behavior.

Appellant next asserts that the claimed features are integrated into a practical application because:

[1)] specific ‘routing information’ is sent to a navigation system of an available electric vehicle that has been determined to have a current battery charge level that is sufficient to reach the travel destination of another electric vehicle that has an insufficient battery charge level to reach a travel destination of such another electric vehicle[.]

...

2) “‘routing information’ is sent to a navigation system of the available electric vehicle *when* it is determined that a vehicle exchange will allow the available electric vehicle to reach the travel destination of the available electric vehicle,”... and 3) “‘travel distance’ of the another electric vehicle at the current battery charge level of the another electric vehicle is predicted.”

(Appeal Br. 9.)

We disagree with Appellant. As we found above, the device components of claim 1 are generic recitations of the most basic computer components and/or of a power system which do not integrate the judicial exception as to “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. Thus, there can be no practical application.

Also, in each of Appellant’s points 1–3 above, items such as, “routing information,” “a user agreement,” “exchange score” and “travel distance” are data being operated on by the computer system. (Appeal Br. 9.) As to such 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).

As to Appellant’s assertion that “[a] technology-based solution of *extending battery life* is also provided by taking into account battery depletion issues” (Appeal Br. 9), we note that an improvement in efficiency alone does not render a claim patent eligible:

[w]hile 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., 839 F.3d 1089, 1095 (Fed. Cir. 2016).

Appellant next argues:

The resulting synergistic interplay is thus seen as being *two special invocation/triggering mechanisms* that are used to specially invoke specific processing steps pertaining to providing special routing information to a vehicle that has both (1) an *adequate* battery charge and (2) the desired travel by such vehicle *is allowed* by the exchange.

(Appeal Br. 10.)

First, Appellant’s arguments are not commensurate with the broader scope of claim 1 which does not recite *invocation/triggering mechanisms*. Second, as found above, claim 1 recites no inventive concept under a 35 U.S.C. § 101 analysis. Appellant’s points 1 and 2 above are directed to abstract ideas which “merely present[] the results of abstract processes of collecting and analyzing information [in human comprehensible form], without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *SAP Am.*,

898 F.3d at 1167.

To the extent that Appellant is arguing that claim synergism operates to effect a nonobvious result, we note that synergism in and of itself, is not conclusive of unobviousness in that synergism might be expected. *In re Huellmantel*, 324 F.2d 998, 1003 (CCPA 1963). Even so, a novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diehr*, 450 U.S. at 188–89 (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

Claims 5 and 18

Appellant’s argument to claims 5 and 8 are similar to those made for claim 1 concerning the practical application argument (*see* Appeal Br. 10), particularly to the triggering aspect of the claims. For the same reasons given above for why this argument was not persuasive for claim 1, it likewise is not persuasive for claims 5 and 18 either.

Appellant’s other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive of error. (*See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R–08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”)).

CONCLUSION

We conclude the Examiner did not err in rejecting claims 1, 5–12, 14 and 17–20 under 35 U.S.C. § 101.

Appeal 2020-002166
Application 14/951,916

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 5-12, 14, 17-20	§ 101	Eligibility	1, 5-12, 14, 17-20	

DECISION

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