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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ARUN SAMUGA, RICH KATZ, and BLAKE SCHNORF

Appeal 2020-002970
Application 14/534,941
Technology Center 3600

Before JUSTIN BUSCH, MATTHEW J. McNEILL, and SCOTT E. BAIN,
Administrative Patent Judges.

McNEILL, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20, which are all the claims pending in this application. 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 Elemica, Inc. Appeal Br. 1.

STATEMENT OF THE CASE

Introduction

Appellant's application relates to a trading partner commerce network that recommends and connects trading partners that generally do not conduct business together. Spec. ¶ 6. Claim 1 is illustrative of the appealed subject matter and reads as follows with bracketed numbering added:

1. A method of establishing communications between supply chain communication partners for supply chain communications, the method comprising:

[1] receiving, over a network interface of a supply chain communications system resident on at least one server, an overall plurality of messages from a first trading partner, each message of the overall plurality of messages destined for a first plurality of recipients, the first plurality of recipients including a first recipient, the first recipient receiving a first plurality of messages of the overall plurality of messages and having a first location of operation, the first plurality of messages being sent from a first enterprise server of the first trading partner to the supply chain communications system;

[2] determining, by a message translation system, for each message of the first plurality of messages from the first trading partner, a message type of each of the first plurality of messages, the determining producing a first plurality of message types associated with the first plurality of messages;

[3] determining, by the message translation system, for each message of the first plurality of messages from the first trading partner, a required output format for each message of the first plurality of messages, the determining producing a first plurality of output formats associated with the first plurality of messages, respectively, the first plurality of output formats being determined based upon the first plurality of message types of the first plurality of messages, respectively, and configuration information related to the first recipient, respectively;

[4] translating, by the message translation system, each message of the first plurality of messages from the first trading partner into a determined required output format for the message, the translating producing a translated first plurality of messages;

[5] transmitting, using a network interface of the supply chain communications system, each translated message of the translated first plurality of messages to the first recipient;

[6] receiving, in a master data store on the at least one server, first business data from the message translation system regarding the first plurality of messages, including the first location of operation;

[7] receiving, in the master data store resident on the at least one server, second business data from the message translation system regarding a second plurality of messages sent to the supply chain communications system from a second enterprise server of a second trading partner, including locations for transactions of each of the second plurality of messages, wherein the second trading partner is not among the first plurality of recipients, the first trading partner, the second trading partner and the plurality of recipients connected to the supply chain communications system;

[8] receiving, at the master data store, a request for master data, including the first business data and the second business data, from a pattern recognition engine, the pattern recognition engine sending the master data to a recommendation engine;

[9] recognizing, via the pattern recognition engine, a correlation between the first plurality of messages and the second plurality of messages in the recommendation engine of the supply chain communications system based on similarities between at least a portion of the stored information of the master data regarding the first plurality of messages and at least a portion of the stored information of the master data regarding the second plurality of messages including at least one of the locations for transactions of each of the second plurality of messages being the same as the first location of operation;

[10] recognizing, via the supply chain communications system, that the first recipient is not doing business with the second trading partner;

[11] transmitting, by a recommendation engine of the supply chain communications system through the second enterprise server, information to the second trading partner regarding establishment of communications with the first recipient;

[12] receiving, by the recommendation engine, an acceptance of connection from the second trading partner that accepts the establishment of communications between the second trading partner and the first recipient; and

[13] automatically sending, by a campaign management engine, a request for the first business data and the second business data to the master data store and the campaign management engine creates a program creation alert to automate transactions by creating convenient connections between the second trading partner and the first recipient, the program creation alert facilitating the logging, filtering and sending of business messages in the message translation system from the second trading partner to the first recipient.

The Examiner's Rejections

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. *See* Final Act. 7–10.

Claims 1–15 stand rejected under 35 U.S.C. § 112(a) as failing to comply with the written-description requirement. *See* Final Act. 4.

Claims 1–15 stand rejected under 35 U.S.C. § 112(b) as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. *See* Final Act. 5–7.

ANALYSIS

Patent-Ineligible Subject Matter

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 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, 69 (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 183 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 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 176; *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.* (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 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 PTO published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (“Revised Guidance”). Under that guidance, 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); and

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).

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

See Revised Guidance.

Revised Guidance Step 1

Step 1 of the Revised Guidance asks whether the claimed subject matter falls within the four statutory categories of patentable subject matter

identified by 35 U.S.C. § 101: process, machine, manufacture, or composition of matter. *See Revised Guidance*. Claim 1 recites “[a] method.” Appellant does not argue the Examiner erred in concluding claim 1 falls within the four statutory categories of patentable subject matter. We agree with the Examiner’s conclusion because claim 1 falls within the process category.

Revised Guidance Step 2A, Prong 1

Under Step 2A, Prong 1 of the Revised Guidance, we determine whether the claims recite 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). *See Revised Guidance*.

The Examiner determines claim 1 is directed to “establishing communications between supply chain communication partners for supply chain communications.” Final Act. 7–8. The Examiner determines this is a method of organizing business relations, which is a certain method of organizing human activities that qualifies as an abstract idea. *Id.* at 8.

Appellant argues the Examiner errs because the claims are not a mental process that can be performed in the human mind. *See Appeal Br.* 6–7. Appellant argues the invention is a narrowly claimed solution that automatically connects trading partners and translates messages between them without human intervention and that this narrowly claimed solution is not an abstract idea. *Id.* at 6.

Claim 1 recites a method of establishing communications between supply chain communication partners that includes thirteen steps. In particular, Steps 1, 6, 7, 8, and 12 recite “receiving” various data related to

communications between trading partners. Steps 2 and 3 recite “determining” a message type and output format for such messages. Step 4 recites “translating” received messages according to the requirements of steps 2 and 3. Step 5 recites “transmitting” the translated message. Steps 9 and 10 recite “recognizing” relationships between potential trading partners and step 11 recites “transmitting” information to a trading partner about establishing communications with another potential partner. Step 13 recites “sending” an alert that creates connections between trading partners.

The steps of the claimed method, under their broadest reasonable interpretation, recite business relations, in particular identifying potential relationships between members of a supply chain network and recommending communications between these members. These business relations comprise commercial or legal interactions, which fall within the certain methods of organizing human activity category of abstract ideas identified in the Revised Guidance.

We also note that certain steps of the claimed method, under their broadest reasonable interpretation, recite concepts that are performed in the human mind, including observations, evaluations, and judgments. In particular, steps 1, 6, 7, 8, and 12 recite “receiving” various data related to communications between trading partners, which is a series of observations. Steps 2 and 3 recite “determining” a message type and output format for such messages, which are evaluations or judgments. Step 4 recites “translating” messages, which is an evaluation or judgment. Steps 9 and 10 recite “recognizing” relationships between potential trading partners, which is a series of evaluations or judgments.

Appellant argues claim 1 cannot be performed in the human mind, but

this argument is conclusory and unpersuasive. *See* Appeal Br. 6. Appellant has not persuasively identified any portion of the above-recited steps that cannot be performed in the human mind or using pen and paper. Indeed, but for the generic computer limitations discussed in more detail with respect to Prong 2, these steps may be performed in the human mind or using pen and paper. *See Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”); *Versata Dev. Grp. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”).

Accordingly, we conclude claim 1 recites concepts performed in the human mind, which fall within the mental processes category of abstract ideas identified in the Revised Guidance.

Revised Guidance Step 2A, Prong 2

Under Step 2A, Prong 2 of the Revised Guidance, we next determine whether the claims recite additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)).

The “additional elements” recited in claim 1 include “a network interface,” “a supply chain communication system,” “at least one server,” “a first [and second] enterprise server,” “a message translation system,” “a master data store,” “a pattern recognition engine,” “a recommendation engine,” and “a campaign management engine.” None of these additional

elements constitute “additional elements that integrate the exception into a practical application.”

To integrate the exception into a practical application, the additional claim elements must, for example, improve the functioning of a computer or any other technology or technical field (*see* MPEP § 2106.05(a)), apply the judicial exception with a particular machine (*see* MPEP § 2106.05(b)), affect a transformation or reduction of a particular article to a different state or thing (*see* MPEP § 2106.05(c)), or apply or use the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment (*see* MPEP § 2106.05(e)). *See* Revised Guidance.

Appellant argues claim 1 integrates the recited abstract idea into a practical application by “automatically connecting two trading partners and translating the messages sent between them after a recommendation to connect is accepted by one of the previously unconnected trading partners.” *See* Appeal Br. 7.

Appellant has not persuaded us of Examiner error. Claim 1 recites a series of steps to translate messages between trading partners and identify, based on the translated messages, potential additional trading partners for either party. Thus, as argued by Appellant (*see* Appeal Br. 7), claim 1 focuses on the business practice of translating messages and identifying business relationships, not on any particular improvement to technology. The critical task identified by Appellant—identifying potential trading partners—is purportedly improved by recognizing potential connections using translated message data, not any improvement to the underlying technology. None of these alleged improvements “enables a computer . . . to

do things it could not do before.” *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018) (emphasis added). Such claims, whose focus is “not a physical-realm improvement but an improvement in wholly abstract ideas,” are not eligible for patenting. *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Our reviewing court has “made clear that mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology.” *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017). Like the claims in *Credit Acceptance*, the focus of claim 1 is on the business practice, “and the recited generic computer elements ‘are invoked merely as a tool.’” *Id.* (citing *Enfish*, 822 F.3d 1327); *see also Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1334 (Fed. Cir. 2015) (collecting cases). The claimed additional elements are used to achieve the claimed results and are not focused on “a specific means or method that improves the relevant technology.” *McRO*, 837 F.3d at 1314. Also, the Specification notes that making connections between trading partners was traditionally “difficult and labor intensive.” Spec. ¶ 4. Appellant claims to improve this business practice, not any particular technology.

The additional elements of claim 1, including those identified above, comprise generic computer elements that are invoked as a tool to implement this improved business practice. The Specification confirms the generic nature of these additional elements. *See, e.g.*, Spec. ¶¶ 20–22.

For these reasons, Appellant has not persuaded us of Examiner error with respect to Step 2A, Prong 2 of the Revised Guidance. We, therefore,

conclude the judicial exception is not integrated into a practical application under the Revised Guidance.

Revised Guidance Step 2B

Under Step 2B of the Revised Guidance, we next determine whether the claims recite an “inventive concept” that “must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). There must be more than “computer functions [that] are ‘well-understood, routine, conventional activit[ies]’ previously known to the industry.” *Alice*, 573 U.S. at 225 (second alteration in original) (quoting *Mayo*, 566 U.S. at 73).

Appellant argues claim 1 is extremely specific, which ensures the claim is more than mere instructions to apply a method of organizing human activity. *See* Reply Br. 4. Appellant has not persuaded us of Examiner error. Narrow claims do not ensure patent eligibility. “As a matter of law, narrowing or reformulating an abstract idea does not add ‘significantly more’ to it.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1291 (citing *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018)).

The Examiner determines claim 1 recites generic computer systems performing generic computer functions and does not recite an inventive concept. *See* Final Act. 7–8; Ans. 10–12. We agree. Appellant has not persuasively identified, nor have we found, any “additional elements” that amount to “significantly more” than the abstract idea recited by claim 1. As noted above, the Specification confirms the generic nature of the claimed

additional elements. *See, e.g.*, Spec. ¶¶ 20–22. We, therefore, sustain the patent-ineligible subject matter rejection of claim 1. We also sustain the rejection of independent claim 15, which Appellant argues is patent eligible for the same reasons.

We also sustain the rejection of dependent claims 2–14 and 16–20, for which Appellant relies on the same arguments. *See id.*

Written Description

The Examiner finds claim 1 lacks written-description support for:

and the campaign management engine creates a program creation alert to automate transactions by creating convenient connections between the second trading partner and the first recipient, the program creation alert facilitating the logging, filtering and sending of business messages in the message translation system from the second trading partner to the first recipient.

See Final Act. 4; Ans. 3–5.

Appellant argues the Examiner errs because the Specification supports this limitation in at least paragraphs 16, 23, 25, and 26 and Figures 1 and 2. *See* Appeal Br. 3. Appellant argues the Specification discloses the campaign management engine creates the program creation alert and sends the alert to the seller/buyer. *See id.* (citing Spec. ¶ 25). Appellant argues Figure 2 shows the program creation alert is sent from the campaign management engine to the seller/buyer, which facilitates messages being transmitted between the seller/buyer and the message translation system. *Id.* (citing Fig. 2).

Appellant has not persuaded us of Examiner error. The Specification discloses the campaign management engine creates a program creation alert and sends the program creation alert to the seller/buyer. *See* Spec. ¶ 25; *see also* Fig. 2. The Specification also discloses network 110 logs, filters, and

sends business messages. Spec. ¶ 23. However, Appellant does not identify, nor have we found, any disclosure in the Specification of “the program creation alert facilitating the logging, filtering and sending of business messages in the message translation system from the second trading partner to the first recipient,” as claimed.

The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. *See, e.g., Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1564 (Fed. Cir. 1991). Here, there is no disclosure of a connection between the program creation alert and the logging, filtering, and sending of business messages, as recited in claim 1. Accordingly, we sustain the Examiner’s written-description rejection of claim 1. We also sustain the written-description rejection of dependent claims 2–15 for the same reasons.

Indefiniteness

The Examiner identifies multiple limitations in claim 1 that the Examiner determines render the claim indefinite. *See* Final Act. 5–7. In particular, the Examiner determines the limitation “transmitting, by a recommendation engine” renders claim 1 indefinite because it is unclear whether this recommendation engine is the same recommendation engine that is previously recited twice in claim 1. *See id.* at 5.

Appellant argues an ordinarily skilled artisan would recognize the recommendation engine to be the same as the recommendation engine previously recited in the claim. *See* Appeal Br. 4.

Appellant has not persuaded us of Examiner error. Claim 1 recites the limitation “recommendation engine” four times. First, claim 1 recites “the

pattern recognition engine sending the master data to *a recommendation engine*.” Second, claim 1 recites “recognizing, via the pattern recognition engine, a correlation between the first plurality of messages and the second plurality of messages *in the recommendation engine of the supply chain communications system* based on similarities.” This second recitation is introduced using “the” to indicate that it is referencing the “a recommendation engine” previously recited.

Third, claim 1 recites the disputed limitation, “transmitting, by *a recommendation engine of the supply chain communications system* through the second enterprise server, information to the second trading partner regarding establishment of communications with the first recipient.” In this instance, claim 1 again recites “a recommendation engine” along with the qualifier “of the supply chain communications system.” Finally, claim 1 recites “receiving, by *the recommendation engine*, an acceptance of connection from the second trading partner.”

We agree with the Examiner that the scope of the claim is unclear, specifically with respect to the “recommendation engine” limitation in the third and fourth recitations. The third “recommendation engine” may refer to the same recommendation engine previously recited twice, as Appellant contends, but it is unclear whether this is the case from the language of the claims. Appellant argues this interpretation is clear because the third recommendation engine recites “of the supply chain communications system.” We disagree because this qualifier does not clarify whether there is one or two recommendation engines (or potentially more). Thus, we agree with the Examiner that as currently drafted, claim 1 is indefinite.

The Examiner also determines the limitation “automatically sending by a campaign management engine, a request for the first business data and the second data” is unclear because the claims do not recite the campaign management engine receiving or using the requested data. *See* Ans. 6–7. The Examiner determines this limitation seems to imply that the campaign management engine is performing other claim limitations, rendering the claim unclear. *Id.*

Appellant argues the limitation is clear on its face and the open-ended nature of the claim does not render the limitations indefinite. *See* Reply Br. 3. We agree with Appellant. The fact that claim 1 does not specify what happens after the campaign management engine automatically sends the claimed data request does not render the limitation itself unclear. Instead, this open-ended recitation impacts the breadth of the claim.

The Examiner also determines the limitation:

and the campaign management engine creates a program creation alert to automate transactions by creating convenient connections between the second trading partner and the first recipient, the program creation alert facilitating the logging, filtering and sending of business messages in the message translation system from the second trading partner to the first recipient

is unclear because neither the claim nor the Specification explain how the program creation alert automates transactions or facilitates the logging, filtering, and sending of business messages. *See* Ans. 7–10.

Appellant argues this limitation is clear because these functions are achieved by the claimed method steps. *See* Appeal Br. 5. Appellant argues the program creation alert does not perform these functions, but instead

alerts other portions of the system that the connection has been created and is running. *See id.*

In light of Appellant’s argument, we agree with the Examiner that this limitation is unclear. Specifically, Appellant argues the program creation alert does not perform any of the claimed functions, but claim 1 recites the program creation alert is created “to automate transactions by creating convenient connections between the second trading partner and the first recipient.” Further, the program creation alert “facilitat[es] the logging, filtering and sending of business messages in the message translation system from the second trading partner to the first recipient.” Appellant’s argument seems to indicate that the program creation alert does not perform these steps, but instead is a mere notification that these steps are otherwise occurring. Accordingly, this limitation is unclear. For these reasons, we sustain the rejection of claim 1 as indefinite. We also sustain the indefiniteness rejection of dependent claims 2–15.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	
1–15	112(a)	Written Description	1–15	
1–15	112(b)	Indefiniteness	1–15	
Overall Outcome			1–20	

Appeal 2020-002970
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TIME PERIOD FOR RESPONSE

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. § 41.50(f).

AFFIRMED