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EXAMINER

ABDI, KAMBIZ

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD L. KRAMPE and NEAL J. PEACOCK

Appeal 2013-010784¹
Application 12/653,741²
Technology Center 3600

Before MICHAEL C. ASTORINO, BART A. GERSTENBLITH, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

HUTCHINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 3–10, and 12–15. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Our decision references Appellants' Appeal Brief ("Br.," filed Feb. 20, 2013), and the Examiner's Answer ("Ans.," mailed June 5, 2013).

² Appellants identify Coin Free, LLC. as the real party in interest. Br. 1.

CLAIMED INVENTION

Appellants' claimed invention "relates to establishing credit on an automatic vending machine . . . using a cellular telephone, or other personal wireless communication device, using an applet placed on the personal communication device that can communicate with a vending universal wireless device placed on the vending device." Spec. 1, ll. 3–10.

Claims 1 and 10 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal:

1. A method of establishing credit on a vending device by a consumer comprising:
 - coupling a vending universal wireless interface to a vending device controller;
 - activating an applet on a personal wireless communication device to establish a wireless link with said vending device controller;
 - communicating between said personal wireless communication device and said vending device to acquire the vending device's identification number and vending information;
 - establishing a wireless link between said personal wireless communication device and a remote computer server;
 - transmitting information acquired from said vending device from said personal wireless communication device to said remote computer server along with a request for credit approval for use on said vending device;
 - determining credit availability for said through said remote computer server;
 - generating a transaction record from the transmitted request;
 - transmitting a response from said remote computer server to said personal communication device authorizing a predetermined credit for use on said vending device when such credit is authorized;
 - transmitting said credit approval from said personal wireless communication device to said vending device; and

activating said vending device to dispense a product therefrom;

thereby eliminating the need for currency or the surrendering one's credit card for swiping by a third party, or of a dedicated connection between a vending device and a remote computer server to activate a vending device is eliminated.

REJECTIONS

Claims 1 and 3–9 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 4, 5, 7–10, 12, 13, and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kolls (US 7,593,897 B1, iss. Sept. 22, 2009) and Hodgson (US 6,834,271 B1, iss. Dec. 21, 2004).³

Claims 3, 6, and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kolls, Hodgson, and McClure (US 7,640,181 B2, iss. Dec. 29, 2009).

ANALYSIS

Non-statutory Subject Matter

We are persuaded by Appellants' argument that the Examiner erred in rejecting claims 1 and 3–9 under 35 U.S.C. § 101 as patent ineligible subject matter because the Examiner failed to establish a prima facie case of unpatentability. In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme

³ We treat, as inadvertent error, the Examiner's identification of claims 2, 3, 6, 11, and 14 among the claims rejected under this ground. Ans. 6. The Examiner does not discuss any of these claims under this rejection. See Ans. 6–8. Further, claims 2 and 11 are canceled, and claims 3, 6, and 14 are separately rejected by the Examiner at pages 8–9 of the Answer.

Court’s two-step framework, described in *Mayo* and *Alice*. *Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is directed to a patent-ineligible abstract idea. If so, we then consider the elements of the claim — both individually and as an ordered combination — to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Id.* This is a search for an “inventive concept” — an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.*

Applying the first step of the *Alice* test, the Examiner does not establish that claim 1 is directed to an abstract idea. To the contrary, the Examiner finds that claim 1 “do[es] not involve a general concept” (Ans. 5), suggesting that the claim is not directed to an abstract idea and our analysis ends here.

Moreover, even if the Examiner had established that claim 1 is directed to a patent ineligible abstract idea, we are not persuaded that the Examiner considers all of the claim elements both individually and in combination to assess whether the claim amounts to significantly more than an abstract idea. To the contrary, the Examiner finds that the step of determining credit availability, as recited in claim 1, is “a significant solution step,” but is not recited as being “performed by an automated programmed computer, thus failing to make method claim 1 statutory.” Ans. 5. The Examiner summarily concludes that the remaining steps of

claim 1 “have no explicit or inherent recitation of a machine nor qualifying transformation.” *Id.* at 3–4.

However, we are persuaded by Appellants’ argument that the method of claim 1 is tied to at least one particular device, i.e., a vending device, thereby satisfying the machine prong of the machine or transformation test. Br. 5–7. Under the machine-or-transformation test, a method claim recites patentable subject matter if it is tied to a particular machine or transforms an article. *In re Bilski*, 545 F.3d 943, 961 (Fed. Cir. 2008) (en banc). Although the Supreme Court held in *Bilski v. Kappos*, 561 U.S. 593, 604 (2010), that a patent claim’s failure to satisfy the machine-or-transformation test is not dispositive of the section 101 inquiry, the test remains a useful investigative tool.

Here, claim 1 recites a method of establishing credit on a vending device, i.e., a machine. The method recites ten steps, many of which reference particular components of a vending device, information associated with the vending device, and/or communications established and exchanged between the vending device and other devices. For example, claim 1 recites coupling a vending universal wireless interface to a vending device controller, establishing a wireless link between the vending device controller and a personal wireless communication device, acquiring the vending device’s identification number and vending machine, transmitting credit approval from the personal wireless communication device to the vending device, and activating the vending device to dispense a product.

Instead of addressing Appellants’ arguments that the claim is not abstract and is tied to a vending machine, the Examiner repeats the finding that the “claimed significant solution step [(i.e., the step of determining

credit availability)] is not automated, thus making insignificant use of the machine.” Ans. 10.

On this record, we conclude that the Examiner does not establish a prima facie case of unpatentability. Therefore, we do not sustain the Examiner’s rejection of claim 1 or claims 3–9, which depend therefrom, under 35 U.S.C. § 101.

Obviousness

Independent claim 1 and dependent claims 4, 5, and 7–9

We are persuaded by Appellants’ argument that the Examiner has failed to establish a prima facie case of obviousness with respect to independent claim 1. Br. 7–15.

In rejecting claim 1 under 35 U.S.C. § 103(a), the Examiner finds that Kolls discloses all of the claim limitations, except “activating an applet to perform a function.” Ans. 6–7. The Examiner relies on Hodgson to cure the deficiency. *Id.* at 7 (citing Hodgson, col. 4, l. 65–col. 5, l. 4). The Examiner concludes that

the ordinary practitioner of the art at the time of the invention would have seen it as obvious to have to have [sic] combined the known techniques disclosed by Kolls and Hodgson with his own knowledge for the purpose of producing a method of processing investment accounts, motivated by a desire to provide additional payment options at the point of sale of goods and services vended from vending equipment.

Id. (citing Kolls, col. 3, ll. 19–21).

The difficulty with the Examiner’s analysis, as pointed out by Appellants (Br. 9–13), is that neither Kolls nor Hodgson is concerned with using a personal wireless communications device to establish credit on a vending device. Kolls relates to vending equipment that accepts payment

information from a user using a card reader. *See, e.g.*, Kolls, Abstract, col. 3, ll. 27–31, Fig. 4. Wireless hardware may be used to provide audit data remotely for processing, allowing the system to track the inventory and operational status of the vending equipment at a lower cost than dedicated telephone lines. *See id.* at col. 2, l. 26–col. 3, l. 7; *see also id.* at col. 3, ll. 44–53.

Hodgson, on the other hand, relates to “secure transactions using the Internet.” Hodgson, col. 1, ll. 16–18. The portion of Hodgson relied on by the Examiner describes that

[a] Java run-time environment (JVM) by Sun Microsystems is installed on the consumer PC 12 and allows for plug-in access to consumer PC 12 hardware. The JVM is required to activate the PIN/PAD 16 from a web browser plug-in. The JVM also has added security and encryption routines that enable SSL communication from within an applet.

Id. at col. 4, l. 65–col. 5, l. 4.

Neither of these disclosures is directed to using a personal communications device to establish credit on a vending machine or otherwise effect a transaction. Here, neither the Examiner’s stated rejection nor the Examiner’s responsive arguments provides the necessary factual basis or reasoning to establish that the combination of Hodgson and Kolls discloses or suggests, “activating an applet on a personal wireless communication device to establish a wireless link with said vending device controller,” as recited in claim 1.

On the present record, we are not persuaded that the Examiner has established a prima facie case of obviousness. Therefore, we do not sustain the Examiner’s rejection of claim 1 and claims 4, 5, and 7–9, which depend therefrom, under 35 U.S.C. § 103(a).

Independent claim 10 and dependent claims 12, 13, and 15

Independent claim 10 includes language substantially similar to the language of claim 1, and is rejected based on the same erroneous finding as claim 1. Therefore, we do not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of independent claim 10, and claims 12, 13, and 15, which depend therefrom, for the same reasons set forth above with respect to claim 1.

Dependent claims 3, 6, and 14

Claims 3, 6, and 14 ultimately depend from one of independent claims 1 or 10, and are rejected based on the same findings and rationale by the Examiner that we have found to be in error. In view of the foregoing, we will not sustain the Examiner's rejections of claims 3, 6, and 14 under 35 U.S.C. § 103(a).

DECISION

We reverse the Examiner's rejection of claims 1 and 3–9 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

We reverse the Examiner's rejections of claims 1, 3–10, and 12–15 under 35 U.S.C. § 103(a).

REVERSED