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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KARIM ANWAR RAMMAL

Appeal 2017-004916
Application 14/222,616¹
Technology Center 3600

Before MURRIEL E. CRAWFORD, BRUCE T. WIEDER, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

Opinion for the Board filed by CRAWFORD, *Administrative Patent Judge*.

Opinion Dissenting filed by WIEDER, *Administrative Patent Judge*.

CRAWFORD, *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 1–19. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ The Real Party in Interest in this appeal is NET2TEXT LTD.

THE INVENTION

The present invention generally relates to methods and systems for conducting secure purchase and payment transactions, and more particularly to a method, system and computer program product for conducting secure purchase and payment transactions using a mobile phone. (Spec. ¶ 002).

Claim 1 is representative of the subject matter on appeal.

Claim 1 (Rejected): A computer implemented system for processing payments for goods or services, the system comprising:

a mobile phone of a user including a mobile phone number associated with a mobile phone account of the user,

wherein a payment processor implemented by first circuitry is configured to receive a payment request for goods or services from a merchant, the payment request including the mobile phone number associated with the mobile phone account of the user;

the first circuitry of the payment processor, based on the payment request, is further configured to send a payment authorization request to a mobile operator implemented by second circuitry and configured to service the mobile phone account of the user;

the second circuitry of the mobile operator, based on the payment authorization request, is configured to send, over a mobile network of the mobile operator, a payment authorization request text message to the mobile phone of the user implemented by third circuitry and connected to the mobile network of the mobile operator, the payment authorization request text message

requesting authorization for payment based on the payment request;

the third circuitry of the mobile phone of the user, based on the payment authorization request text message, is configured to send, over the mobile network of the mobile operator, a payment authorization text message including a personal identification number of the user associated with the mobile phone number of the user to the mobile phone operator for authorization of payment based on the payment request;

the second circuitry of the mobile operator is further configured to receive the payment authorization text message including the personal identification number of the user over the mobile network of the mobile operator for verification;

the first circuitry of the payment processor is further configured to receive a payment authorization from the mobile phone operator based on the payment authorization text message authorizing or not authorizing the payment based on the payment request;

the first circuitry of the payment processor is further configured to, if the payment authorization from the mobile phone operator authorizes the payment based on the payment request, pay the merchant for the goods or services from an account of the mobile phone operator, wherein the mobile phone operator charges the mobile phone account of the user for the payment;

the first circuitry of the payment processor is further configured to, if the payment authorization from the mobile phone operator does not authorize the payment based on the

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payment request or if the payment authorization text message is not received by the mobile operator over the mobile network of the mobile operator within a predetermined period of time, decline to pay the merchant for the goods or services; and

wherein no financial information of the user nor the personal identification number of the user are sent to the payment processor.

THE REJECTIONS²

Claims 1, 5 and 9 are rejected under 35 U.S.C. §112, first paragraph.

Claims 1–19 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

² The Examiner has withdrawn a rejection of claims 9–12 under 35 U.S.C. § 101 as directed to software per se. (Final Act. 2; *cf.* Non-Final Action, mailed November 17, 2014). The Examiner also has withdrawn a non-statutory double patenting rejection over claims 1–12. (*See* Ans. 5).

ANALYSIS

REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH

The Examiner concludes that the claims recite a mobile operator implemented by second circuitry and that as the mobile operator is interpreted as a carrier such as Verizon or AT&T and therefore, the mobile operator itself could not be comprised of application specific circuitry. (Final Act. 11). We will not sustain this rejection because we agree with the Appellant that the Specification provides support for the recitations.

REJECTION UNDER 35 U.S.C. §101

We will sustain the rejection of claims 1–19 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, . . . then ask, “[w]hat else is there in the claims before us?” . . . To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. . . . [The Court] described step two of this analysis as a search for an “inventive concept”—*i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

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Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)) (citations omitted).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. 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.’” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing 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 judicial exception is integrated into a practical application. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 FR 50, pp 50–57, PTO–2018–0053 (Jan. 7, 2019).

The Examiner determines that the claims are directed to payment processing which the Examiner concludes is a fundamental economic practice. (Final Act. 7). The Examiner found that the additional elements or combination of elements in the claims other than the abstract idea per se amount to no more than the instructions to implement the idea on a computer, and/or recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine and conventional activities previously known. (Final Act. 8).

We note that the Specification discloses that the claims are directed to conducting secure purchase and payment transactions (Spec. ¶ 2). The Specification identifies that “security, fraud and identity theft are major concerns” for consumers while using credit and debit cards. (Spec. ¶¶ 3, 4, 6). According to the Specification, other alternative options such as “money transfer using a third independent financial entity, E-mail payments, and mobile wallet applications that act as intermediaries or interfaces between a customer’s financial institution (typically a bank or a credit card company) and the retailer/merchant)” also share the same drawbacks as credit and debit cards. (Spec. ¶ 4). However, these alternative payment options may also include “unreasonable hidden costs that are additionally charged by credit cards, mobile wallets and other financial instruments that are above and beyond what the retailer is already charging.” (Spec. ¶ 6). The Specification further discloses that “[c]onventional systems of payment and methods using mobile phones” are also known in the art, but “have limitations, including requiring downloading of complex software, need to use hi-tech mobile phones, need for additional security codes, hidden costs, and additional charges by the customer's bank or credit card company.” (Spec. ¶ 7).

To address these limitations and concerns, transactions are processed in exemplary independent claim 1 by the mobile phone, the mobile operator, and the payment processor in a way such that no personal information is sent to the payment processor, i.e., “[t]he present method as described above virtually presents an anti-fraudulent payment system that provides peace of mind and convenience to customers as they and their mobile operator are the only ones who know the PIN Code to authorize payments to retailers.” (Spec. ¶¶ 2, 20, 34). To accomplish this, the mobile operator checks the

customer's mobile number account balance, and if found sufficient to pay for the purchase, sends a text message to the customer on their mobile number giving them details of the retailer and the total amount payable. If the customer agrees to the purchase, the customer sends a unique PIN code to the mobile operator and the mobile operator then agrees to pay the payment processor. (Spec. ¶¶ 20–21). As such, the payment process is between the mobile operator and the payment processor with the mobile operator essentially acting as an intermediary debiting/charging the customer's mobile account for the amount of the purchase. (Spec. ¶¶ 23–24). From this disclosure it follows that the claimed invention is directed to conducting secure purchase and payment transactions as determined by the Examiner.

The recitations in claim 1 demonstrate further that the claimed subject matter relates to conducting secure purchase and payment transactions. For example, claim 1 recites a “mobile operator”, a “payment processor” and a “mobile phone.” Claim 1 further recites that the “payment processor is configured to receive a payment request for goods and services from a merchant,” and that the payment processor includes “circuitry configured to send a payment authorization request to a mobile operator.” The mobile operator includes “circuitry configured to send . . . a payment authorization request text message to a mobile phone.” Claim 1 also recites “the mobile phone . . . based on the payment authorization request text message . . . is configured to send . . . a payment authorization text message.” The payment processor is configured “to receive payment authorization from the mobile phone operator based on the payment authorization.” Claim 1 also recites “wherein no financial information of the user nor the personal identification number of the user is sent to the payment processor.” Claim 1 is directed to

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conducting secure purchase and payment transactions which is a sales activity. Sales activity is a certain method of organizing human activity and is a judicial exception. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 FR at 52.

Turning to the second prong of the “directed to test”, we note that claim 1 requires a “payment processor,” a “mobile operator,” and a “mobile phone” to perform the steps of claim 1. These recitations do not affect an improvement in the functioning of the processor, mobile operator of phone or other technology. In addition, claim 1 does not recite a particular machine or manufacture. In fact, Appellant’s Specification discloses that all or a portion of the devices and subsystems of the exemplary embodiments can be conveniently implemented using one or more general purpose computer systems, microprocessors, digital signal processors, or micro-controllers. (Spec. ¶ 49). The mobile operator is disclosed as the mobile phone service provider/operator/carrier with a processor which is configured to send, receive, process and store data (Spec. ¶ 16). No improvement to the mobile operator is disclosed or claimed. These recitations do not impose meaningful limits on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *2019 Revised Patent Subject Matter Eligibility Guidance* at 55. Thus, claim 1 is directed to a judicial exception and thus recites an abstract idea without a practical application.

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 that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself.

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See Alice, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

The introduction of a processor, a mobile phone and a mobile operator into the claims does not alter the analysis at *Alice* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 134 S. Ct. at 2358 (alterations in original) (citations omitted).

Instead, “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 2359. 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 retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of

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the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the trading industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *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. As to the 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).

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-access/display 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.

The claims do not, for example, purport to improve the functioning of the mobile phone, payment processor or mobile operator. As we stated above, the claims do not affect an improvement to any other technology or technical field.

The Specification spells out that the devices and subsystems of the exemplary embodiments can be implemented on the World Wide Web. In addition, the devices and subsystems of the exemplary embodiments can be implemented by the preparation of application-specific integrated circuits or by interconnecting an appropriate network of conventional component circuits, as will be appreciated by those skilled in the electrical art(s). Thus, the exemplary embodiments are not limited to any specific combination of hardware circuitry and/or software. (Spec. ¶49). Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea of secure payment processing using some unspecified, generic computers. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

We have reviewed all the arguments (Appeal Br. 8–19; Reply Br. 5–11) Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the claims are directed to an abstract idea because claim 1 is not directed to a contractual relationship, hedging or mitigating settlement risk. (Brief 11). Even if the Appellant is correct, the claims are

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directed to conducting secure purchase and payment transactions which is a sales activity and thus is a method of organizing human activities which is an abstract idea. *2019 Revised Patent Subject Matter Eligibility Guidance*, 52.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claims are rooted in and are analogous to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014). (Brief 13). In *DDR Holdings*, the Court evaluated the eligibility of claims "address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after 'clicking' on an advertisement and activating a hyperlink." *DDR*, 773 F.3d at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no "pre-Internet analog." *Id.* at 1258. The Court cautioned, however, "that not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* For example, in *DDR Holdings* the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. See *DDR*, 773 at 1258–59 (citing *Ultramercial*, 772 F.3d 709, 715–16 (Fed. Cir. 2014)). As noted there, the *Ultramercial* claims were "directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before." *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 715–16). Nevertheless, those claims were patent ineligible because they "merely recite[d] the abstract idea of 'offering media content in exchange for viewing an advertisement,' along with 'routine additional steps such as updating an

activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.” *Id.*

Appellant’s asserted claims are analogous to claims found ineligible in *Ultramerical* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramerical* recited “providing [a] media product for sale at an Internet website;” “restricting general public access to said media product;” “receiving from the consumer a request to view [a] sponsor message;” and “if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query.” *Ultramerical*, 772 F.3d at 712. Similarly, Appellant’s asserted claims recite receiving, analyzing, modifying, and transmitting data. This is precisely the type of Internet activity found ineligible in *Ultramerical*.

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the claims include an element or combination of elements that amount to significantly more than the judicial exception. (Brief 14). The Appellant argues that the present invention includes benefits such as increased flexibility, faster search times and smaller memory requirements. Yet, the advantages that Appellant touts do not concern an improvement to computer capabilities, but instead relate to an improvement to the process for conducting payments for which a computer system is used as a tool in its ordinary capacity. In this case, a generic graphical user interface performs the well-understood function of receiving user input, and a generic computer system performs routine data processing steps. Appellant fails to identify, and we do not find, any indication in the record that the claimed invention improves computer functionality, requires specialized

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computer hardware or other inventive components, invokes inventive programming, or is otherwise directed to something other than the abstract idea identified by the Examiner.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claims are novel. (Brief 17). To the extent Appellant maintains that the limitations of claim 1 necessarily amount to "significantly more" than an abstract idea because the claimed apparatus is allegedly patentable over the prior art, Appellant misapprehends the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an "inventive concept," the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for "an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself." *Alice*, 134 S. Ct. at 2355. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo* 566 U.S. 66, 72–73.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claims perform functions that were not known in the art and therefore the claims recite significantly more than any abstract idea. (Brief 17). Specifically, Appellant argues that the elements of the system are configured or programmed in a way to perform the functions that were not known in the art. (Brief 17). Appellant's argument does not apprise us of error because Appellant conflates the conventionality of the steps that the processor performs and the conventionality of the computer functions required to implement the steps. In this regard, Appellant does not explain how the computers involved in the present invention perform

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functions other than the conventional transmission, storage, and analysis of data which are well known functions of any computer.

We do not agree with the Appellant that the claims are analogous to the claims in *BASCOM Global Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). (Reply 11). Appellant argues that sending a payment authorization including a PIN of the user to the mobile phone operator which then sends a payment authorization to the payment processor does not merely select information by content and source. Specifically, Appellant argues that the sequence of events in the instant process differs from the routine and conventional sequence of events for conducting mobile payments.

In *BASCOM*, the Federal Circuit followed the Supreme Court's guidance for determining whether the claims recite an inventive concept set forth in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2357–60 (2014). In *Alice*, the Supreme Court explained that, under the second step of the patent-eligibility analysis, “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea of intermediated settlement on a generic computer.” *Alice* 134 S. Ct. 2347, 2359 (2014). The Supreme Court also provided examples of claims that represent more than instructions to implement an abstract idea on a generic computer, such as claims that purport to improve the functioning of the computer itself and claims that effect an improvement in any other technology or technical field. *Id.* at 2359–60.

Turning to *BASCOM*, the Federal Circuit held “[t]he inventive concept described and claimed in the '606 patent is the installation of a

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filtering tool at a specific location, remote from end-users, with customizable filtering features specific to each end user.” 827 F.3d at 1350. In determining this feature to be an inventive concept, the Federal Circuit explained that the remote location of a filtering tool having customizable user-specific filtering features provides the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server and is a technical improvement over prior art ways of filtering content. *Id.* at 1350–51. Notably, the Federal Circuit specifically determined that “the claims may be read to ‘improve[] an existing technological process.’” *Id.* at 1351 (citing *Alice*, 134 S. Ct. at 2358).

In *BASCOM* it was filtering by an ISP server which was the focus of the claims, whereas claim 1 focuses on processing and exchanging data between a mobile operator and a payment processor regarding a payment which is authorized by a user PIN. Claim 1 recites a process in which the payment is made between the mobile operator and a payment processor with the payment being authorized by a user PIN without revealing any personal information of the customer. There is no improvement to the mobile phone, mobile operator or the payment processor.

In addition, we agree with the Examiner, that it is well known and conventional to use a PIN code to authorize a payment using a mobile phone as demonstrated by the prior art of Goldthwaite (US 2004/0019564) which is discussed by the Examiner.³ As such, the sequence of events recited in

³ In a related application (U.S. Application No.: 14/222,615 (“’615 Application”); Appeal No.: 2017-003902), the Examiner also discussed “prior art as evidenced by the prior art associated with the prosecution of the parent case 13/148,043 now patent 8,862, 792,” (’615 Application Examiner’s Answer, mailed, November 22, 2016, at 5), “[u]sing a PIN code to authorize a financial transaction through a mobile phone using sms” (’615

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claim 1 is well known and conventional. Therefore, we agree with the Examiner that claim 1 does not include an inventive concept.

In view of the foregoing, we will sustain the Examiner's rejection of claim 1 under 35 U.S.C. §101. We will also sustain the rejection as it is directed to the remaining claims because the Appellant has not argued the separate eligibility of these claims.

CONCLUSIONS OF LAW

We conclude the Examiner did err in rejecting claims 1, 5 and 9 under 35 U.S.C. § 112, first paragraph.

We conclude that the Examiner did not err in rejecting claims 1–19 under 35 U.S.C. § 101.

DECISION

The Examiner's rejection under 35 U.S.C. §112 is not affirmed.

The Examiner's rejection under 35 U.S.C. §101 is affirmed.

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

Application Examiner's Answer 7 (citing paragraphs 11 and 93 of US Patent Pub. No. 2007/0107044 to Yuen)), and "[b]illing to a mobile operator" ('615 Application Examiner's Answer 9 (citing paragraph 7 of US Patent Pub. No. 2006/0149644 to Sulmar; paragraphs 38 and 65 of US Patent Pub. No. 2001/0037264 to Husemann)).

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MATTHEW S. MEYERS, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*, dissenting.

I respectfully dissent from the majority opinion affirming the Examiner's rejection of claims 1–19 under 35 U.S.C. § 101.

In analyzing whether a claim recites patent-eligible subject matter, we apply a two-step framework, earlier set out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014).

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* If the claims

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are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, we apply a “directed to” two prong test to: 1) evaluate whether the claim recites a judicial exception, i.e., a law of nature, natural phenomenon, or abstract idea, 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.” *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

With regard to the first prong of the 2019 Guidance, I agree with the majority opinion “that the Specification discloses that the claims are directed to conducting secure purchase and payment transactions.” (Opinion 7 (citing Spec. ¶ 2).) I also agree with the majority opinion that “the claims are directed to conducting secure purchase and payment transactions which is a sales activity and thus is a method of organizing human activities which is an abstract idea. (Opinion 12–13; *see also id.* at 8–9.)

With regard to the second prong, I do not agree with the majority opinion that the recitations in claim 1 “do not impose meaningful limits on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” (Opinion 9 (citing 2019 Guidance at 55).)

Claim 1 recites “a mobile phone of a user . . . associated with a mobile phone account,” “a payment processor implemented by first circuitry is configured to receive a payment request,” “the first circuitry . . . is further configured to send a payment authorization request to a mobile operator implemented by second circuitry,” “second circuitry . . . is configured to send, *over a mobile network of the mobile operator*, a payment authorization request text message to the mobile phone,” “third circuitry of the mobile phone . . . is configured to send, *over the mobile network of the mobile operator*, a payment authorization text message,” “the second circuitry . . . is further configured to receive the payment authorization text message . . . *over the mobile network of the mobile operator*,” “the first circuitry . . . is further configured to receive a payment authorization from the mobile operator,” “wherein no financial information of the user nor the personal identification number of the user are sent to the payment processor.” (Emphasis added.)

Claim 1 refers to four entities: a mobile phone of a user, a merchant, a payment processor, and a mobile operator. Claim 1 does not recite via what method or system information is sent between (1) the merchant and the payment processor, or (2) the payment processor and the mobile operator. But claim 1 does recite that information sent between (3) the mobile operator and the mobile phone of the user is sent via a mobile network of the mobile operator. (*See Claim 1.*) In short, claim 1 recites a specific network via which the recited communications between the mobile operator and the mobile phone of the user, i.e., the payment request and authorization text messages, are sent.

In view of the recitation in claim 1 of a specific network via which the recited communications between the mobile operator and the mobile phone

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of the user are sent, I would, in this case, determine that claim 1 imposes a meaningful limit on the abstract idea to which claim 1 is directed, i.e., “conducting secure purchase and payment transactions (*see* Opinion 12–13; *see also id.* at 8–9), such that “the claim is more than a drafting effort designed to monopolize the judicial exception” (*see* 2019 Guidance at 54).

I respectfully dissent from the affirmance of the rejection under § 101.