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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/222,615	03/22/2014	Karim Anwar Rammal	151670-001 US CON2	6573

95628 7590 06/27/2019

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EXAMINER	
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ART UNIT	PAPER NUMBER
3694	

NOTIFICATION DATE	DELIVERY MODE
06/27/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KARIM ANWAR RAMMAL

Appeal 2017-003902
Application 14/222,615[1]
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 REQUEST FOR REHEARING

STATEMENT OF THE CASE[2]

The Appellant filed a Request for Rehearing under 37 C.F.R. § 41.52 of the Decision on Appeal.

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[1] According to Appellant, the real party in interest is NET2TEXT LTD. Appeal Br. 1.

[2] This Decision references the Appellant's Request for Rehearing ("Request," filed May 30, 2019) and the Board Decision ("Decision," mailed April 1, 2019).

In the Decision on Appeal, the Board affirmed the rejection of claims under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter. Judge Wieder dissented from the majority opinion.

We note at the outset that a Request for Rehearing "must state with particularity the points believed to have been misapprehended or overlooked by the Board." 37 C.F.R. § 41.52(a). A Request for Rehearing is not an opportunity to rehash arguments raised in the Appeal Brief or in the Reply Brief. Neither is it an opportunity to merely express disagreement with a decision without setting forth points believed to have been misapprehended or overlooked. Arguments not raised in the briefs before the Board and evidence not previously relied on in the briefs also are not permitted except in the limited circumstances set forth in §§ 41.52(a)(2) through (a)(4). *Id.* To the extent the Appellant presents supplemental or new arguments in the Request, those arguments are untimely and, as such, will not be considered except where the arguments are based on a recent relevant decision of either this Board or a Federal Court, or on an allegation that the Board's decision contains an undesignated new ground of rejection. *See id.*

Appellant argues that our decision overlooks that there is no evidence to support our findings on "meaningful limits" in accordance with the *2019 Revised Patent Subject Matter Eligibility*, 84 FR 50, pp. 50–57, PTO-2018-0053 (Jan. 7, 2019) (*"Guidance"*). (Request 2).

The *Guidance* states that only if a judicial exception recited in a claim is not integrated into a practical application in a manner that imposes a meaningful limit on the judicial exception does the claim recite an abstract idea. *Id.* at 53. The *Guidance* states that the exemplary considerations which are indicative of a judicial exception being integrated into a practical

application if an additional element are: (1) reflects an improvement in the functioning of a computer or an improvement to other technology or technical field; (2) applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease; (3) implements a judicial exception with a particular machine; (4) effects a transformation or reduction of a particular article to a different state or thing; and (5) applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular environment, such that the claims as a whole is more than a drafting effort designed to monopolize the exception. *Id.* at 55.

Appellant argues that we overlooked that the claims address limitations and concerns of previous solutions in a way such that no personal information is sent to the payment processor. (Request 3). Appellant argues that a meaningful limit is imposed by the specific network via which the recited communications between the mobile operator and mobile phone of the user are sent. *Id.*

We did not overlook that the claims address limitations and concerns of previous solutions in a way that no personal information is sent to the payment processor. On page 7 of the Decision, we found that the present invention claims a payment process 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.

We determined that the claims did not integrate the judicial exception into a practical application so as to impose a meaningful limits on the judicial exception. Following the *Guidance*, we considered whether the

claim included an additional element that reflects an improvement in the functioning of the computer or an improvement to other technology. We determined on page 9 of the Decision that it did not. This was supported by evidence. Specifically, we relied on the disclosure in the Specification at paragraph 49 that all or a portion of the devices or subsystems can be implemented using one or more general purpose computer systems, microprocessors, digital signal processors, or microprocessor. In addition, we relied on evidence in paragraph 16 of the Specification that there is no improvement to the actual mobile phone and operator recited. This paragraph discloses that the present invention allows the 4 billion plus and growing mobile phone users worldwide to pay for goods and services through their mobile phone service provider, using their mobile phone number and/or mobile phone account number (also referred to as "mobile number" or "mobile phone number") securely for goods and/or services they purchase locally and/or globally. The method enables online and offline commerce transactions using mobile phone numbers, with customers being billed by their mobile phone service provider/operator/carrier (also referred to as "mobile operator"). This disclosure is evidence that the mobile phones and operators recited in the claim are those that are in use locally and globally, and not some improved mobile phones and/or operators. As such, we did rely on evidence that the recitation of a processor in claim 1 does not integrate the judicial exception into a practical application.

We do not agree with Appellant that we overlooked that a specific network in which the recited communications between the mobile operator and the mobile phone of the user impose a meaningful limitation on the judicial exception. As we noted above, there is no improvement recited in

claim 1 of the mobile operator, mobile phone, and payment processor. The invention is directed to making purchases more secure. The invention does this by having the purchase communication be made by the mobile operator and the payment processor thereby shielding the personal information of the consumer from the payment processor. This is not directed to an improvement in the mobile operator, mobile phone, or payment processor, but merely to the way that the invention uses the unimproved mobile operator, mobile phone, and payment processor to shield the personal information of the consumer and, thereby, make the purchase more secure. This is done by the mobile operator acting as an intermediary between the mobile phone and the payment processor. As such, the communication process of the claimed invention makes a payment more secure by not passing any personal information between the mobile phone and the payment processor. This communication process, like the mobile phone, mobile operator, and payment processor is not improved. As we stated in our Decision on page 15, the communication process whereby a mobile phone and mobile operator exchange text messages to make purchases, thereby preventing personal information from being sent to the payment processor, was also not improved. We further note that the communication between various components is done using ordinary text messages. (Spec. ¶ 18). As such, there is no improvement in the way the data are communicated.

In addition, we agree with the Examiner that while references may not have been combined to form a prior art rejection of the claims, references exist which show the use of mobile phone numbers to initiate transactions

and the billing of purchases to mobile phone accounts as well as the use of text messages for authorization of transactions. (Final Act. 8).

As the mobile operator is not improved, the recitations of "second circuitry" is not a recitation of an improved mobile operator. The Specification clearly discloses that invention is not limited to any specific combination of hardware circuitry and/or software. (Specification 49).

We are not convinced of error on our part by Appellant's argument that the fact that alternative systems covered by the judicial exception could instead send personal information to the payment processor is evidence that the claims will not monopolize the judicial exception.

"While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("[T]hat 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."). And, "[w]here a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot." *Ariosa*, 788 F.3d at 1379.

Lastly, we do not agree that it was a violation of due process to not analyze on a claim by claim basis all the claims at issue in light of the *Guidance*. Consideration of each claim individually does not require a separate written analysis for each individual claim. We decline to find error here in the Decision to not address the patent-eligibility of each claim inasmuch as the claims are all directed to the same abstract idea of

conducting secure purchase and payment transactions. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1348 (Fed. Cir. 2014) (explaining that when all claims are directed to the same abstract idea, "addressing each claim of the asserted patents [is] unnecessary."). In addition, Appellant did not argue the separate eligibility of the remaining claims.

In any case, we agree with the Examiner that the remaining claims are directed to the same judicial exception of processing secure payment transactions. (Final Act. 8). While these claims recite several limitations referring to circuitry and the content of the payment authorization request text message, for example, they are nonetheless directed to processing secure payment transactions. For example, claim 2 further defines the second circuitry, but is directed to processing secure payment transactions. Claim 3 further defines the content of the payment authorization request text message, but also is directed to processing secure payment transactions.

In view of the foregoing, we decline to make any changes in our Decision.

CONCLUSION

We have carefully considered the Request but, for the foregoing reasons, we do not find it persuasive as to error in the Board's decision to affirm the rejection of claims under 35 U.S.C. § 101.

DENIED

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WIEDER, *Administrative Patent Judge*, dissenting.

I respectfully dissent from the majority decision. I would grant Appellant's request for rehearing.