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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SUZANNE LABOMBARDA

Appeal 2024-001050
Application 16/428,977
Technology Center 3700

Before ELENi MANTIS MERCADER, DENISE M. POTHIER, and
JEREMY J. CURCURI, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–12, 14–17, 19, 20, 22, and 23. Claims 13, 18, 21, and 24–27 are canceled. 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(a). Appellant identifies the real party in interest as Suzanne Labombarda. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a “[m]ethod for achieving goals through emphasis on persistence.” Title. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for enhancing a student’s likelihood of achieving success, said method comprising the steps of:
 - a) encouraging the student to set a goal;
 - b) encouraging the student to formulate milestones toward achieving the goal;
 - c) encouraging the student to attempt to progress through the milestones;
 - d) encouraging the student to record her progress through the milestones;
 - e) monitoring the student’s progress through the milestones;
 - f) determining whether the student is using maximal effort to proceed through the milestones;
 - g) providing positive feedback to the student upon her success in proceeding through one or more milestones while using maximal effort;
 - h) providing positive feedback to the student upon her failure to proceed through one or more milestones while using maximal effort;
 - i) emphasizing that struggle and failure are expected and necessary aspects of achieving the goal and that effort and persistence are the most important factors in achieving the goal; and
 - l) training a teacher to perform said steps a) through i) by providing the teacher with access to an online portal that

provides at least information regarding said steps a) through i) and resources pertaining to steps a) through i).

REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Brock	US 2016/0314694 A1	Oct. 27, 2016

REJECTIONS

Claims 1–12, 14–17, 19, 20, 22, and 23 are rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 15–20.

Claims 1–12, 14–17, 19, 20, 22, and 23 are rejected under 35 U.S.C. § 103 as obvious over Brock. Final Act. 50–53.

OPINION

The Eligibility Rejection of Claims 1–12, 14–17, 19, 20, 22, and 23

The Examiner determines independent claim 1 is directed to a judicial exception without significantly more. Final Act. 15–20. The Examiner determines certain claim limitations fall within certain methods of organizing human activity and/or mental processes groupings of abstract ideas. *See* Final Act. 18 (“Thus, the limitations identified above recite an *abstract idea* since the limitations correspond to *certain methods of organizing human activity*, and/or *mental processes*, which are part of the enumerated groupings of *abstract ideas* identified according to the current eligibility standard (see MPEP 2106.04(a) [(9th ed. rev. 07.2022 Feb. 2023)]). For instance, the current claims correspond to managing personal behavior or evaluation, wherein a student is presented with one or more advices in order to increase the student’s chance to succeed in achieving a

goal, etc.”). The Examiner further determines the judicial exception is not integrated into a practical application. Final Act. 18–19. The Examiner further determines the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception. Final Act. 19–20.

Appellant presents the following principal arguments:

Step 2A, Prong 2

Regarding claim 1, “the combination of at least steps h), i), and l) implements the abstract idea with a particular machine or manufacture, namely the online portal, that is integral to the claim.” Appeal Br. 16.

Although an online portal may be a conventional element, it is the appropriate element to solve for the particular problem of providing the information to many different types of people in many different types of settings. Access by anyone, anywhere is *integral* to the claim and the online portal addresses this requirement.

Appeal Br. 17. “That being provided with this information and resources is integral to enabling steps h) and i) is supported by ¶ 8 of the declarations of Ms. Bruce, Mr. Alfonso, and Ms. Johnson.” Appeal Br. 18.

Step 2B

“[T]he additional element of the online portal, in combination with novel, nonobvious steps h) and i) and the remainder of step l), amounts to significantly more than an abstract idea.” Appeal Br. 18. “The additional element of the online portal in step l) is not a well-understood, routine, or conventional activity because the content it is providing is novel.” Appeal Br. 19. “[T]he Examiner has not established that the online portal is well-understood, routine, or conventional when considered in combination with the steps of the present invention.” Appeal Br. 21.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

We select claim 1 as representative.

Are the claims patent-eligible?

Step 1

Claim 1 is the sole independent claim. Claim 1 recites a method, which falls within the “process” category of 35 U.S.C. § 101.

Thus, we must determine whether the claim recites a judicial exception, and fails to integrate the exception into a practical application. If both elements are satisfied, the claim is directed to a judicial exception under the first step of the *Alice/Mayo* test. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012).

Step 2A, Prong 1

Claim 1 recites the following steps:

- a) encouraging the student to set a goal;
- b) encouraging the student to formulate milestones toward achieving the goal;
- c) encouraging the student to attempt to progress through the milestones;
- d) encouraging the student to record her progress through the milestones;
- e) monitoring the student’s progress through the milestones;
- f) determining whether the student is using maximal effort to proceed through the milestones;

g) providing positive feedback to the student upon her success in proceeding through one or more milestones while using maximal effort;

h) providing positive feedback to the student upon her failure to proceed through one or more milestones while using maximal effort;

i) emphasizing that struggle and failure are expected and necessary aspects of achieving the goal and that effort and persistence are the most important factors in achieving the goal; and

l) training a teacher to perform said steps a) through i) by providing the teacher with access to an online portal that provides at least information regarding said steps a) through i) and resources pertaining to steps a) through i).

We determine steps a)–i) describe “managing personal behavior or relationships or interactions between people, (including social activities, teaching, and following rules or instructions).” MPEP § 2106.04(a)(2)(II). In short, the various steps a)–i) describe teaching—a fundamental activity that has been long been performed by humans—which falls within the “[c]ertain methods of organizing human activity” grouping of abstract ideas. MPEP § 2106.04(a)(2)(II); *see also* Final Act 18.

Step 2A, Prong 1 determines whether the claims *recite* a judicial exception, while Step 2A, Prong 2 determines whether the claims are *directed to* the judicial exception. Appellant’s arguments do not squarely focus on the Step 2A, Prong 1 inquiry.

Thus, we determine claim 1 recites a judicial exception under Step 2A, Prong 1.

Step 2A, Prong 2

Because claim 1 recites a judicial exception, we next determine if the claim recites additional elements that integrate the judicial exception into a practical application.

In addition to the limitations of claim 1 discussed above that recite abstract concepts, claim 1 further recites the step “l) training a teacher to perform said steps a) through i) by providing the teacher with access to an online portal that provides at least information regarding said steps a) through i) and resources pertaining to steps a) through i).”

We determine step “l) training a teacher to perform said steps a) through i) by providing the teacher with access to an online portal that provides at least information regarding said steps a) through i) and resources pertaining to steps a) through i)” does not add meaningful limitations to the judicial exception because it is merely directed to the insignificant post-solution activity of data outputting. *See* MPEP § 2106.05(g); *see also* Final Act. 19 (“[T]he above ***additional element*** is utilized merely to facilitate the *abstract idea* (e.g. *providing access to information or resources via an online portal*). The above demonstrates that the claimed ***additional element*** is utilized merely as a tool to implement the abstract idea.”); Ans. 31–36.

Contrary to Appellant’s arguments, we do not agree that the abstract idea is implemented with a particular machine. Although Appellant argues that the online portal solves a particular problem, we determine the online portal is insignificant post-solution activity. In short, providing an online portal, with nothing more, is no more than extra-solution, conventional data outputting.

Further, Appellant’s argument “[t]hat being provided with this information and resources is integral to enabling steps h) and i) is supported

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by ¶ 8 of the declarations of Ms. Bruce, Mr. Alfonso, and Ms. Johnson” (Appeal Br. 19) also does not show reversible error. Steps h) and i) are part of the abstract idea, and thus, do not integrate the abstract idea into a practical application. Step l) recites *providing* information; however, *providing* information as recited provides no more than extra-solution, conventional data outputting.

Thus, we determine claim 1 is directed to a judicial exception under Step 2A, Prong 2.

Is there something else in the claims that ensures that they are directed to significantly more than a patent ineligible concept?

Step 2B

Because claim 1 is directed to a judicial exception, we must determine, according to *Alice*, whether the claim recites an element or combination of elements that is enough to ensure that the claim is directed to significantly more than a judicial exception.

In addition to the limitations of claim 1 discussed above that recite abstract concepts, claim 1 further recites the step “l) training a teacher to perform said steps a) through i) by providing the teacher with access to an online portal that provides at least information regarding said steps a) through i) and resources pertaining to steps a) through i).”

Regarding step “l) training a teacher to perform said steps a) through i) by providing the teacher with access to an online portal that provides at least information regarding said steps a) through i) and resources pertaining to steps a) through i),” our reviewing court has recognized that sending and receiving data are well-understood, routine, and conventional activities. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That

a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”); *see also* MPEP 2106.05(d), Final Act. 19 (“[T]he claimed ***additional element*** is directed to conventional computer element, which is serving merely to perform conventional computer functions. Accordingly, none of the current claims recites an element—or a combination of elements—directed to an ‘inventive concept’.”), Ans. 36–43.

Contrary to Appellant’s arguments, we do not agree that the additional element of the online portal amounts to significantly more than the abstract idea. Further, although Appellant argues that the content provided is novel, the content from the previous steps in claim 1 is part of the abstract idea and does not provide significantly more than a patent ineligible concept. In short, step 1) recites *providing* information; however, *providing* information as recited provides no more than extra-solution, conventional data outputting.

Thus, we determine claim 1 is not directed to significantly more than a patent ineligible concept.

We, therefore, sustain the rejection of claim 1.

We also sustain the rejection of claims 2–12, 14–17, 19, 20, 22, and 23, which are not separately argued with particularity. *See* Appeal Br. 16–21.

The Obviousness Rejection of Claims 1–12, 14–17, 19, 20, 22, and 23

The Examiner finds Brock teaches all limitations of claim 1. Final Act. 50–51. In particular, the Examiner finds,

Although **Brock** does not explicitly describe, “g) *providing positive feedback to the student upon her success in proceeding through one or more milestones while using maximal*

effort; h) providing positive feedback to the student upon her failure to proceed through one or more milestones while using maximal effort; i) emphasizing that struggle and failure are expected and necessary aspects of achieving the goal and that effort and persistence are the most important factors in achieving the goal”, the above limitations are directed to interactions or conversations that a user—such as an educator—makes with a student.

In this regard, **Brock** already describes that the educator interacts with the student; for example, by asking the student various questions regarding the student’s goals, etc. ([0035]).

Accordingly, it would have been obvious to one of ordinary skill in the art, before the effective filing date of the claimed invention, to modify **Brock**’s implementation; for example, by making an arrangement that allows the educator to provide advice and/or some recommendations to the student, etc., so that the student would not face significant burden to achieve his/her goals.

Final Act. 51.

Appellant presents the following principal arguments:

“[T]he content of the messages provided in steps h) and i) must be given patentable weight.” Appeal Br. 7; *see also* Appeal Br. 12–16 (arguing that steps h), i), and l) include printed matter that should be given patentable weight).

While [Brock’s outcomes are] laudable, these outcomes accurately represent the entirety of Brock in that they do not touch on the importance of the student using maximal effort to achieve her goals and do not touch on the paramount messages of steps h) and i) of the present invention—that failure while using maximal effort is to be praised; that struggle and failure are expected and necessary aspects of goal achievement; and that effort and persistence are the most important factors in goal achievement.

Appeal Br. 8.

“Contrary to the Examiner’s statement, it would *not* have been obvious to one of ordinary skill in the art, before the effective filing date of the claimed invention, to modify Brock’s implementation. This is because steps h) and i) were not known prior to the present invention.” Appeal Br. 9 (citing Declarations of Christi Leigh, Melissa Bruce, Erick Alfonso, Christine Johnson).

In response, the Examiner explains “the content/topic of the feedback (*verbal remark*) does not have a patentable weight since it is directed to **nonfunctional descriptive matter.**” Ans. 4.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Frye*, 94 USPQ2d at 1075.

We select claim 1 as representative.

“Claim limitations directed to printed matter are not entitled to patentable weight unless the printed matter is *functionally related* to the substrate on which the printed matter is applied.” *Praxair Distribution, Inc. v. Mallinckrodt Hosp. Prods. IP Ltd.*, 890 F.3d 1024, 1031 (Fed. Cir. 2018) (emphasis added). Our reviewing court has also explained that this printed matter doctrine is not strictly limited to “printed” materials. *Praxair*, 890 F.3d at 1032. More specifically, “a claim limitation is directed to printed matter ‘if it claims the content of information.’” *Praxair*, 890 F.3d at 1032 (quoting *In re Distefano*, 808 F.3d 845, 848 (Fed. Cir. 2015)).

“Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability.” *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (footnote omitted). As a general proposition, we need not give patentable weight to non-functional descriptive material absent a new and nonobvious

structural or functional relationship between the descriptive material and the substrate. *See In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004); *see also King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1279 (Fed. Cir. 2010); MPEP § 2111.05.

In *Ex parte Nehls*, 88 USPQ2d 1883, 1888 (BPAI 2008) (precedential), the Board held that the nature of the information being manipulated by the computer should not be given patentable weight absent evidence that the information is functionally related to the process “by changing the efficiency or accuracy or any other characteristic” of the steps. *See also Ex parte Curry*, 84 USPQ2d 1272, 1274 (BPAI 2005) (non-precedential) (holding “wellness-related” data stored in a database and communicated over a network was non-functional descriptive material as claimed because the data “does not functionally change” the system).

“Today, printed matter encompasses any information claimed for its communicative content, and the doctrine prohibits patenting such printed matter unless it is ‘functionally related’ to its ‘substrate,’ which encompasses the structural elements of the claimed invention.” *C R Bard Inc. v. AngioDynamics, Inc.*, 979 F.3d 1372, 1381 (Fed. Cir. 2020) (citing *Praxair*, 890 F.3d at 1032; *Distefano*, 808 F.3d at 848–49). To determine whether a functional relationship exists, *Bard* instructs us to consider “whether the printed matter merely informs people of the claimed information, or whether it instead interacts with the other elements of the claim to create a new functionality in a claimed device or to cause a specific action in a claimed process.” *Bard*, 979 F.3d at 1381.

Regarding the step “h) *providing positive feedback* to the student upon her failure to proceed through one or more milestones while using maximal effort” (claim 1 (emphasis added)), this subject matter recites information—

positive feedback—claimed for its communicative content, and thus, recites printed matter. Further, this printed matter merely informs the student of the claimed information and the claim does not recite using or otherwise interacting with the content; therefore, the content is non-functional descriptive material that does not patentably distinguish over Brock.

Similarly, the step “i) *emphasizing that struggle and failure are expected and necessary aspects of achieving the goal and that effort and persistence are the most important factors in achieving the goal*” (claim 1 (emphasis added)) recites information claimed for its communicative content, and thus, recites printed matter. Further, this printed matter also merely informs the student of the claimed information and the claim does not recite using or otherwise interacting with the content; therefore, the content is non-functional descriptive material that does not patentably distinguish over Brock.

Finally, the step “l) training a teacher to perform said steps a) through i) by providing the teacher with access to an online portal that *provides at least information regarding said steps a) through i) and resources pertaining to steps a) through i)*” recites information claimed for its communicative content, and thus, recites printed matter. Further, this printed matter merely informs the teacher of the claimed information and the claim does not recite using or otherwise interacting with the content; therefore, the content is non-functional descriptive material that does not patentably distinguish over Brock.

Appellant’s arguments do not show reversible error for the reasons discussed above. In short, we do not give patentable weight to the information claimed for its communicative content.

We, therefore, sustain the rejection of claim 1.

We also sustain the rejection of claims 2–12, 14–17, 19, 20, 22, and 23, which are not separately argued with particularity. *See* Appeal Br. 6–16.

CONCLUSION

The Examiner’s decision to reject claims 1–12, 14–17, 19, 20, 22, and 23 is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–12, 14–17, 19, 20, 22, 23	101	Eligibility	1–12, 14–17, 19, 20, 22, 23	
1–12, 14–17, 19, 20, 22, 23	103	Brock	1–12, 14–17, 19, 20, 22, 23	
Overall Outcome			1–12, 14–17, 19, 20, 22, 23	

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. § 1.136(a)(1)(iv) (2025).

AFFIRMED