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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AVADIS TEVANIAN, JR. and MARK STEVANS

Appeal 2013-002478[1]
Application 11/753,128[2]
Technology Center 3600

Before ANTON W. FETTING, BIBHU R. MOHANTY, and
JAMES A. WORTH, *Administrative Patent Judges*.

WORTH, *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 1–24 and 26–46, which constitute all pending claims in the application.

We AFFIRM-IN-PART.

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[1] Our decision refers to the Appellants' Appeal Brief ("Appeal Br.," filed July 2, 2012) and Reply Brief ("Reply Br.," filed Dec. 3, 2012), and the Examiner's Final Office Action ("Final Action," mailed Oct. 31, 2011) and Answer ("Ans.," mailed Oct. 1, 2012).

[2] According to Appellants, the real party in interest is Crowd Technologies, Inc. (Appeal Br. 2).

Introduction

Appellants' disclosure relates to a method and system for collecting, facilitating and compiling prediction information from online users concerning the performance or time behavior of items, and in particular by allowing members of a social network to vote on the anticipated price of a security (Spec. 1, ll. 11–15).

Claims 1, 33, 38, 44, 45, and 46 are the independent claims on appeal. Claim 1, reproduced below with bracketing material added, is illustrative of the subject matter on appeal:

> 1. A method for predicting a future performance of an item with a computing system comprising:
>
> [a] specifying one or more items to be subjected to a community based vote;
>
> [b] wherein said items include an item identifier parameter, a performance parameter, and an optional time related parameter;
>
> [c] receiving and counting votes from a population of persons in the community concerning said set of items with the computing system;
>
> [d] generating a future aggregated performance prediction for said set of items with the computing system based on said votes received from said population;
>
> [e] generating a confidence rating with the computing system, which confidence rating is based on evaluating an accuracy parameter of said population of persons in the community and which rating identifies a likelihood of said future aggregated performance prediction being achieved.

(Appeal Br., Claims App.)

Rejections on Appeal

The Examiner maintains, and Appellants appeal, the following rejections:

I. Claims 1–24 and 26–32 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

II. Claims 1–24 and 26–46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Phillips (US 6,792,399 B1, iss. Sept. 14, 2004) and S. Plous, *A Comparison of Strategies for Reducing Interval Overconfidence in Group Judgments*, 80 JOURNAL OF APPLIED PSYCHOLOGY 443–454 (American Psychological Association 1995), *downloaded from* psycnet.apa.org (hereinafter, "Plous").

ANALYSIS

I. Rejection Under § 101 (Patentable Subject Matter)

Appellants argue the rejection under § 101 of claims 1–24 and 26–32 together. We select independent claim 1 as representative. As such, claims 2–24 and 26–32 stand or fall with independent claim 1. *See* 37 C.F.R. 41.37(c)(iv).

The Examiner determined that claims 1–24 and 26–32 were unpatentable under § 101 because they failed to comply with the "machine or transformation test" used by the Federal Circuit in *In re Bilksi*, 545 F.3d 943 (Fed. Cir. 2008) (*see* Final Act. 4–5).

Appellants argue that the Examiner erred in so finding because the claims use a computing system to perform important functions based on internal processing of a machine (Appeal Br. 9).

The Federal Circuit's test in *In re Bilksi* has been clarified by the Supreme Court's tests set forth in the line of cases beginning with *Bilski v. Kappos*, 561 U.S. 583 (2010), and, culminating more recently, in the framework set forth in *Alice Corp. Pty. Ltd. v. CLS Bank Intern*, 134 S. Ct. 2347 (2014).

We agree with the Examiner inasmuch as the claims disclose steps to be performed by a computer, or a system that performs the steps, where the same steps could be performed by a person without a computer, i.e., as a series of mental steps.

Indeed, independent claim 1 discloses an abstract idea of determining a prediction and a confidence in that prediction, i.e., a likelihood of the prediction being accurate, which is a well-known and fundamental economic principle. *See Alice*, 134 S. Ct. at 2355–56. The other recitations relate to the same abstract idea and do not add anything, individually or as a whole, to transform the abstract idea into patent-eligible subject matter. *See id.* Nor is there any written description in the Specification or recitation in the claims to indicate that this is an invention based on advances in computer technology itself. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)).

For these reasons, we sustain the Examiner's rejection under § 101 of claims 1–24 and 26–32.

II. Rejection Under § 103 (Obviousness)

Independent claim 1

Appellants argue that Plous fails to disclose generating a confidence rating with a computing system, as recited by independent claim 1, i.e.,

"generating a confidence rating with the computing system, which confidence rating is based on evaluating an accuracy parameter of said population of persons in the community and which rating identifies a likelihood of said future aggregated performance prediction being achieved" (Appeal Br. 12–14; Reply Br. 3–4). According to the terms of the limitation, the "confidence rating" is recited as a "likelihood."

The Examiner determines that Plous (pp. 445–446) teaches generating a confidence rating based on an accuracy parameter of the population of persons and which identifies a likelihood (e.g., 9 out of 10 estimates which are correct) (*see* Final Act. 8), and uses participants' own estimates of their accuracy to improve their accuracy (Ans. 8).

We are persuaded by Appellants' argument that the "likelihood" associated with the confidence interval in Plous, i.e., a likelihood of 90%, is pre-determined, and Plous merely describes a method for determining the top and bottom values that cut-off the 90% likelihood (*see* Appeal Br. 12–14). Plous does not describe using the individual votes to determine the likelihood. Thus, Plous does not disclose "generating a confidence rating," as recited by independent claim 1, where the rating is a "likelihood." The Examiner does not rely on Phillips to remedy the argued deficiency in Plous, nor does the Examiner offer reasoning to remedy this deficiency.

We, therefore, do not sustain the Examiner's rejection under § 103(a) of independent claim 1 and its dependent claims.

Independent claims 33, 38, 44, 45, and 46 contain similar language and requirements as independent claim 1. For similar reasons, we do not sustain the Examiner's rejection under § 103(a) of independent claims 33, 38, 44, 45, and 46 and their dependent claims.

DECISION

The decision of the Examiner reject claims 1–24 and 26–32 under 35 U.S.C. § 101 is affirmed.

The decision of the Examiner reject claims 1–24 and 26–46 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART