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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEVEN MATT GUSTAFSON  
and DAVID BRIAN BRACEWELL

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Appeal 2013-003397  
Application 12/638,254  
Technology Center 2100

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Before HUNG H. BUI, JON M. JURGOVAN, and KEVIN C. TROCK,  
*Administrative Patent Judges.*

JURGOVAN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–11. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse the rejection of claims 1–11, and enter new grounds of rejection against claims 1 and 8.<sup>2</sup>

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<sup>1</sup> According to Appellants, the real party in interest is NBCUniversal Media, LLC. App. Br. 2.

<sup>2</sup> Our Decision refers to the Appeal Brief filed Oct. 10, 2012 (“App. Br.”), the Examiner’s Answer mailed Nov. 9, 2012 (“Ans.”), the Reply Brief filed Jan. 9, 2013 (“Reply Br.”), the Final Rejection mailed Apr. 17, 2012 (“Final Act.”), and the Specification filed Dec. 15, 2009 (“Spec.”).

## STATEMENT OF CASE

The claims are directed to a system and method for “intent mining.” “Intent mining” is a type of document analysis in which willingness of an author to perform an action is analyzed through grammatical patterns. Spec.

1. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for intent mining comprising:

performing a preliminary search of a constrained source using one or more seed phrases to generate a plurality of preliminary search results representing different ways of expressing a desired intent;

identifying each of the plurality of preliminary search results that have expressed the desired intent to generate a plurality of intent results;

producing a plurality of action search strings around one or more action verbs in each of the plurality of intent results; and

applying each of the plurality of action search strings on one or more non-constrained sources to generate a plurality of action search results.

A “constrained source” refers to a data source that limits text to a certain number of characters or that requires a compact writing style, such as tweets on Twitter.com. Spec. 3 and 6. A “seed phrase” includes a “pattern” (such as “to see”) and an “item” (such as “movie”). Spec. 6. An example of an “action search string” is “(want|hope|wish|like) (to)?(go)?(and)?see” which encompasses different ways of expressing a “desired intent.” Spec. 7. The symbol “?” after a word inside “( )” signifies the word may or may not be present in data to be searched. *Id.*

## REJECTIONS

Claims 1, 2, 4, 6, 8, and 9 stand rejected under 35 U.S.C. § 103(a) based on Guha (US 2010/0114899 A1, publ. May 6, 2010) and Davies (US 6,823,325 B1, publ. Nov. 23, 2004).

Claim 3 stands rejected under 35 U.S.C. § 103(a) based on Guha, Davies, and Timm (US 2010/0306229 A1, publ. Dec. 2, 2010, and filed June 1, 2009).

Claims 5, 7, 10, and 11 stand rejected under 35 U.S.C. § 103(a) based on Guha, Davies, and Ringger (US 2003/0083863 A1, publ. May 1, 2003).

## PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985–86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.” (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998))).

We give claims their broadest reasonable interpretation consistent with the specification. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). Claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

ANALYSIS

*Rejections under 35 U.S.C. § 103(a)*

Appellants contend Guha and Davies fail to teach “intent mining.” In particular, Appellants argue the cited references fail to teach “*preliminary search results representing different ways of expressing a desired intent*” and “*identifying each of the plurality of preliminary search results that have expressed the desired intent to generate a plurality of intent results,*” as recited in claim 1. App. Br. 13; Reply Br. 4–5.

We agree with Appellants’ contention. There is no mention of “intent mining” in the cited references. The Specification refers to “intent mining” as document analysis in which willingness of an *author* to perform an action (i.e., “desired intent”) is analyzed through grammatical patterns. Spec. 1. With respect to Guha, the Examiner found a data searcher’s “[d]etermining [data] relevance and/or lexical equivalence is considered to be equivalent to identifying a desired intent.” See Ans. 11 citing Guha ¶¶ 59, 64.<sup>3</sup> The Examiner also interpreted “desired intent” to mean “desired information” resulting from a search query using a search engine. See Ans. 11 citing Timm ¶ 5.<sup>4</sup> The Examiner’s interpretation of “desired intent” relates to the intent of the data *searcher*, not the data *author*. We find the Examiner’s interpretation of ‘desired intent’ overly broad and inconsistent with the way this term is used in the Specification. See *Am. Acad. of Sci. Tech. Ctr., Translogic Tech., Inc., supra*. Accordingly, Appellants have met their burden of showing error in the *prima facie* case of obviousness, and we do not sustain the rejection.

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<sup>3</sup> Although this comment was made with respect to the rejection of claim 3, it is revealing concerning the Examiner’s interpretation of “desired intent.”

<sup>4</sup> This comment was also made in connection with the rejection of claim 3.

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Independent claim 8 contains similar limitations to claim 1, and accordingly, we do not sustain the rejection of claim 8 for similar reasons to those stated above with respect to claim 1.

The remaining claims are dependent from either claim 1 or claim 8. As the addition of Timm with respect to claim 3, and Ringger with respect to 5, 7, 10, and 11, do not overcome the deficiencies of Guha and Davies, we do not sustain the rejections of those claims for the same reasons.

Having decided not to sustain the rejections under 35 U.S.C. § 103(a) on this basis, we do not reach Appellants' remaining arguments.

*New Grounds of Rejection of Claims 1 and 8 under 35 U.S.C. § 101*

We enter a new ground of rejection under 35 U.S.C. § 101 against claims 1 and 8 pursuant to our authority under 37 C.F.R. § 41.50(b).

Following the briefings in this case, there have been updates in the law and Examiner guidelines concerning patent eligibility. Specifically, *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 134 S.Ct. 2347 (2014) was decided after conclusion of briefings, and the United States Patent and Trademark Office published the *2014 Interim Guidance on Patent Subject Matter Eligibility*. 79 Fed. Reg. 74,619 –74,633 (Dec. 16, 2014) (“*2014 Interim Guidance*”).

The *2014 Interim Guidance* sets forth a procedure for examination starting with determining whether a claim is directed to one of the statutory categories of subject matter under 35 U.S.C. § 101, i.e., process, machine, manufacture, or composition of matter, and is not wholly directed to a judicial exception to patentability, namely, a law of nature, physical phenomenon, or an abstract idea. *See* Manual of Patent Examining Procedure § 2106(I). In this case, claim 1 satisfies this initial determination

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as it is nominally directed to a method which is a statutory process, and it does not wholly preempt the abstract idea, namely, “intent mining,” that is recited therein.

Next, the *2014 Interim Guidance* applies the two-step test for determining subject matter eligibility as set forth in *Mayo Collaborative Serv. v. Prometheus Labs., Inc.*, 132 S.Ct. 1289 (2012)(“*Mayo*”). The first step of *Mayo* is to determine whether the claim recites a law of nature, a natural phenomenon, or an abstract idea. We find claim 1 recites an abstract idea, namely, “intent mining.”

The next step under *Mayo* is to determine if the claim recites additional elements that amount to significantly more than the judicial exception. Interpreted in the context of the Specification, the claim involves complex data processing, and recites steps that are unconventional. However, these steps are not applied to any particular application. *See Mayo*, 132 S.Ct. at 1302. Further, there is no particular machine expressly applied to perform the recited method. *See Bilski v. Kappos*, 561 U.S. 593, 604 (2010). It is also possible to think of simple cases in which a person could perform the method recited in Appellants’ claim 1 mentally, or with pen and paper. *See Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (holding a method for verifying the validity of a credit card transaction over the Internet nonstatutory as an abstract idea capable of being performed in the human mind or by a human using a pen and paper) and *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333-34 (Fed. Cir. 2012) (“Simply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible.”) Weighing these factors, we find claim 1 is not

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significantly more than the abstract idea, and it is not patentable under 35 U.S.C. § 101. Accordingly, we reject claim 1 on this basis.

Claim 8 is similar to claim 1 but recites in its preamble processing circuitry configured to perform the claimed functions. The mere implementation of an abstract idea on a computer is not sufficient to render a claim patentable. *See Alice*, 134 S.Ct. 2347 at 2358 (citing *Mayo*, 132 S.Ct. at 1301). For this reason as well as those stated with respect to claim 1, we also reject claim 8.

As the Board is not charged with the responsibility of patent examination, we leave it to the Examiner to analyze the remaining claims for compliance with 35 U.S.C. § 101 under the *2014 Interim Guidance*. *See* MPEP § 1213.02.

## DECISION

For the above reasons, the Examiner's rejections of claims 1–11 under 35 U.S.C. § 103(a) are reversed.

We enter new grounds of rejection against claims 1 and 8 under 35 U.S.C. § 101.

37 C.F.R. § 41.50(b) provides that, “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter

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reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner.

(2) Request rehearing. Request that the proceeding be reheard under 37 C.F.R. § 41.52 by the Board upon the same Record.

REVERSED  
37 C.F.R. § 41.50(b)

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