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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOSEPH P. WRIGHT and KARL E. WILLIAMS

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Appeal 2014-006440  
Application 12/752,464<sup>1</sup>  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
MATTHEW S. MEYERS, Administrative Patent Judges.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Joseph P. Wright, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 3, 4 and 6–23. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE and enter NEW GROUNDS OF REJECTION.

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<sup>1</sup> The Appellants identify Harris Corporation as the real party in interest. App. Br. 3.

## THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

Claim 1: A non-transitory computer readable medium having computer executable instructions to perform a method for implementing a campaign, the method comprising:

registering in a database each of a plurality of registered users to receive notifications sent on behalf of a business customer;

creating a given campaign for the business customer by storing campaign data that parameterizes at least timing and content for the given campaign; and

in response to determining to begin distribution of the given campaign based on the campaign data:

sending a unique campaign code associated with the given campaign to a point-of-sale (POS) system to enable tracking of financial activity motivated by the given campaign; and

causing at least one notification to be sent to each of the plurality registered users about the campaign, the notification comprising an offer code that is based on at least a portion of the unique campaign code associated with the given campaign, wherein the unique campaign code associated with the given campaign and the offer code are different codes, and wherein the given campaign is identifiable from the offer code.

## THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Treyz et al. ("Treyz")	US 6,587,835 B1	July 1, 2003
Teague et al. ("Teague")	US 2006/0212355 A1	Sept. 21, 2006

Moukas et al.  
("Moukas")

US 2009/0271267 A1

Oct. 29, 2009

The following rejections are before us for review:

1. Claims 1, 3, 6–19 and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Teague.
2. Claim 20 is rejected under 35 U.S.C. §103(a) as being unpatentable over Teague and Treyzer.
3. Claims 4, 22 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Teague and Moukas.

#### ISSUES

Did the Examiner err in rejecting claims 1, 3, 6–19 and 21 under 35 U.S.C. §103(a) as being unpatentable over Teague?

Did the Examiner err in rejecting claim 20 under 35 U.S.C. §103(a) as being unpatentable over Teague and Treyzer?

Did the Examiner err in rejecting claims 4, 22 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Teague and Moukas?

#### ANALYSIS

*The rejection of claims 1, 3, 6–19 and 21 under 35 U.S.C. §103(a) as being unpatentable over Teague.*

*The rejection of claim 20 under 35 U.S.C. §103(a) as being unpatentable over Teague and Treyzer.*

Independent claims 1 and 15 include a claim limitation to sending a first tracking code (i.e., "campaign code") to a point-of-sale (POS) system to enable tracking of certain information. The Examiner cited paras. 58 and 63

of Teague as evidence that said claim limitation is disclosed in the prior art. Final Act. 9. Said disclosure describes sending a bar code embedded in a customized coupon to a POS. According to Teague paragraph 44, in “an alternate embodiment, [an] embedded tracking code is a bar code.” Accordingly, the Examiner’s characterization that Teague discloses said claim limitation to said first tracking code appears to be correct.

However, the claims also require a second identifying code (i.e., “offer code”) be based on the first tracking code, where the first tracking and second identifying codes are different codes. In that regard, the Examiner cites the Abstract and paragraphs 41–45 and 93–94 of Teague as evidence that said different codes as claimed are disclosed in the prior art. We have reviewed said disclosures but do not see there disclosed the different tracking and identifying codes as claimed. While identifying codes are clearly disclosed (*see* Teague, Abstract and paragraph 94), there is no disclosure of the identifying code is *based* on the tracking code and that it be *different*.

Teague provides a generic disclosure of identifying and tracking codes while the claimed subject matter specifically requires that a second identifying code be based on a first tracking code and that the first tracking and second identifying codes be different codes. Teague alone is insufficient to show that, given identifying and tracking codes, one of ordinary skill in the art would have reached the more specific subject matter claimed.

We note the Examiner’s characterization of the claim limitation to different first tracking and second identifying codes as being nonfunctional

descriptive material. *See* Final Act. 10. However, that characterization is belied by the fact that the codes do have corresponding functions; that is, tracking and identifying. Claim 1, for example, specifically states that the first tracking code “*enable[s]* tracking of financial activity motivated by the given campaign.” (Emphasis added). Why the different codes are nonfunctional, notwithstanding their corresponding different functions, is not adequately explained.

For the foregoing reasons, a prima facie case of obviousness for the subject matter of the independent claims has not been made out in the first instance by a preponderance of the evidence. We reach the same conclusion as to the dependent claims 3, 6–14 and 16–20 that depend from claims 1 and 15 respectively. Accordingly, the rejections are not sustained.

*The rejection of claims 4, 22 and 23 under 35 U.S.C. §103(a) as being unpatentable over Teague and Moukas.*

The rejection of claim 4, which depends from claim 1, is not sustained for the reasons above.

The rejection of claim 22, which is an independent claim, is also not sustained for the reasons above. This is so because it includes the same limitation at issue (i.e., different identifying and tracking codes) and the Examiner’s position that Teague discloses it is similar. *See* Final Act. 16.

Because claim 23 is rejected under §112(b), the rejection of claim 23 under §103 is summarily reversed.

## NEW GROUNDS OF REJECTION

(1) Claim 23 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claim 23 depends from itself (claim 23). *See* Amendment filed Jan. 7, 2013.

(2) Claims 1, 3, 4 and 6-22 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

*Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially—excepted from patent eligibility under §101. According to Alice step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Id.* at 2355.

Taking claim 1 as representative of the claims on appeal, the claimed subject matter is directed to the concept of information tracking and identification. The tracking and identifying of information are fundamental building blocks of knowledge and as such are abstract ideas.

But also, as claimed, the tracking and identifying of information are conducted in a business method environment. According to the Specification, the invention “relates generally to a system and method for managing a marketing campaign.” Spec. ¶ 1. In that context, information tracking and identification are fundamental economic and conventional business practices. The Supreme Court has held certain fundamental

economic and conventional business practices, like “intermediated settlement,” as being abstract ideas. *See Alice*, 134 S. Ct. at 2356–57. The information tracking and identification concept to which claim 1 is directed to is similar to the “intermediated settlement” concept at issue in *Alice*. Thus, consistent therewith, the information tracking and identification concept to which claim 1 is directed to is an abstract idea.

We note that claim 1 does describe an information tracking and identification concept in more particular terms; most notably through tracking and identifying codes that are based on but are different from each other. But this does not disturb the fact that the information tracking and identification concept to which claim 1 is directed to is an abstract idea. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed.Cir.2014) (“Although certain additional limitations, such as consulting an activity log, add a degree of particularity, the concept embodied by the majority of the limitations describes only the abstract idea of showing an advertisement before delivering free content.”).

Step two is 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.’” *Id.* at 715–714.

We see nothing in the subject matter claimed that transforms the abstract idea of information tracking and identification into an inventive concept.

The use of tracking and identifying codes as a means of implementing an information tracking and identification scheme is known and thus adds

little of significance. *Cf. Essociate, Inc. v. Clickbooth.com, LLC*, No. SACV 13-01886-JVS, 2015 WL 1428919 (C.D. Cal. Feb. 11, 2015), *aff'd*, 641 F. App'x 1006 (Fed. Cir. 2016), *cert. denied*, (U.S. Oct. 3, 2016).

The particular scheme claimed does not significantly affect the abstract idea. Albeit a particular application is claimed whereby tracking and identifying codes that are based on but are different from each other describe are used, the scheme does not significantly alter the abstract idea of information tracking and identification in any material way. *Cf. CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (“The Court [*Parker v. Flook*, 437 U.S. 584 (1978)] rejected the notion that the recitation of a practical application for the calculation could alone make the invention patentable.”).

Finally, we note that claim 1 calls for “[a] non-transitory computer readable medium having computer executable instructions to perform a method for implementing a campaign.” The method recited calls for registering users in a database and sending information to a POS system. But any general-purpose computer available at the time the application was filed would have satisfied these limitations. The Specification supports that view. *See* Spec. ¶ 25. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. *Alice* at 2358. Stating an abstract idea “while adding the words ‘apply it’ is not enough for patent eligibility.” *Id.* A general purpose computer is used to employ “well-understood, routine, conventional activities previously known to the industry.” *Alice*, 134 S. Ct. at 2359.

For the foregoing reasons, we find that claim 1 covers claimed subject matter that is judicially—excepted from patent eligibility under §101. The other independent claims — system claims 15 and 22 parallel claim 1 — similarly covering claimed subject matter that is judicially-excepted from patent eligibility under §101. The dependent claims describe various versions of a particular information tracking and identification scheme that do little to patentably transform the information tracking and identification abstract idea.

Therefore, we enter a new ground of rejection of claims 1, 3, 4 and 6–22 under 35 U.S.C. § 101.

For the foregoing reasons, the rejections are reversed but claim 23 is newly rejected under §112(b) and claims 1, 3, 4 and 6–22 are newly rejected under § 101.

#### CONCLUSIONS

The rejection of claims 1, 3, 6–19 and 21 under 35 U.S.C. §103(a) as being unpatentable over Teague is reversed.

The rejection of claim 20 under 35 U.S.C. §103(a) as being unpatentable over Teague and Treyzer is reversed.

The rejection of claims 4, 22 and 23 under 35 U.S.C. §103(a) as being unpatentable over Teague and Moukas is reversed.

Claim 23 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 1, 3, 4 and 6–22 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

#### DECISION

The decision of the Examiner to reject claims 1, 3, 4 and 6–23 is reversed.

Claims 1, 3, 4 and 6–23 are newly rejected.

#### NEW GROUND

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[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 Appellant(s), WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal 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 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 § 41.52 by the Board upon the same record . . . .

REVERSED; 37 C.F.R. § 41.50(b)