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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HAMID BAHADORI and HEMANTH PUTTASWAMY¹

Appeal 2016-000016
Application 11/544,300
Technology Center 2400

Before JOHN C. KERINS, ANNETTE R. REIMERS, and
JILL D. HILL, *Administrative Patent Judges*.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE²

Hamid Bahadori and Hemanth Puttaswamy (Appellants) appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 1–23 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

We AFFIRM.

¹ In the Appeal Brief, International Business Machines Corporation is identified as the real party in interest. Appeal Brief 1 (hereinafter "App. Br.") (filed June 26, 2015).

² The subject application was previously before the Patent Trial and Appeal Board in Appeal No. 2011-013176. *See* Decision dated Dec. 31, 2014. In that Decision, the adverse decision of the Examiner was REVERSED.

CLAIMED SUBJECT MATTER

The claimed subject matter relates to tracking based on user session data. *See Spec.* ¶¶ 8, 18. Claims 1, 4, 10, 11, and 23 are independent.

Claim 1 is illustrative of the claimed subject matter and recites:

1. A method for tracking web usage data, comprising:
 - assigning a session ID to a new user session, the user session tracking web usage data of a user on a web server;
 - including said session ID with monitored action data sent by the user to an analytics server system, wherein said analytics server system is independent of said web server;
 - grouping, with said analytics server system, said monitored action data with identical session IDs into session groups prior to storage in a relational database; and
 - inserting, with said analytics server system, at least one segmentation ID into each session of said session groups, each of said at least one segmentation ID defining a property of interest to a client, wherein said segmentation ID is used to filter said session groups into session groups that exhibit the property of interest.

ANALYSIS

Patent-Ineligible Subject Matter

Claims 1–23

In rejecting claim 1 under 35 U.S.C. § 101, the Examiner applies the two-step framework set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1296–97 (2012) and reiterated in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014), which considers, in the first step, whether the claims are “directed to” a patent-ineligible concept, e.g., an abstract idea, and then, in a second step, whether the claims, individually and as an ordered combination, recite an inventive concept—an element or combination of elements sufficient to

ensure the claims amount to “significantly more” than the abstract idea and transform the nature of the claims into a patent-eligible concept.

Pursuant to the first step of the analysis, the Examiner determines the claims are directed to the abstract idea of “determining a property of interest by tracking web usage data,” which entails nothing more than “sorting or analyzing the data” based on the properties of the data. Non-Final Act. 2³; Ans. 3.⁴ The Examiner further determines that the claim scope is similar to the concept of “comparing new and stored information and using rules to identify options” identified as an abstract idea in *SmartGene, Inc. v. Advanced Biological Labs.*, SA 555 F. Appx. 950, 955 (Fed Cir. 2014). Non-Final Act. 2.

Indeed, our reviewing courts have held claims ineligible under § 101 when directed to data tracking/gathering and data analysis. *See Electric Power Group v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (quoting *SmartGene, Inc.*, in which “analyzing information” was found to be an abstract idea).⁵ Similarly to claim 1, the claims in *SmartGene, Inc.* and

³ Non-Final Office Action (hereinafter “Non-Final Act.”) (mailed Apr. 24, 2015).

⁴ Examiner’s Answer (hereinafter “Ans.”) (mailed Aug. 19, 2015).

⁵ As Appellants’ recognize in their Reply Brief, the Examiner does not rely on *SmartGene, Inc.* as it relates to mental processes confined to the medical field, i.e., steps doctors go through in their minds or do regularly, but as persuasive authority to the extent it involves the generic concept of data analysis being held to be an abstract idea. *See* Reply Br. 4 (hereinafter “Reply Br.”) (filed Sept. 23, 2015) (“The Examiner now appears to acknowledge that claims 1–23 could not be accomplished in the human mind.”); *see also* Ans. 3–4 (“[T]he fact that it is a doctor performing the claimed abstract idea was not set forth as part of the claim determined to be the abstract idea” and “the rejection of the claims is silent regarding any indication that the claims are rejected because they can be accomplished in the human mind.”).

Electric Power Group are directed to data analysis. The claims in *Electric Power Group* are even more like claim 1, in that they are both directed to gathering and analyzing information and then presenting results, without any particular asserted inventive technology for performing those functions. See Ans. 3; *Electric Power Group* at 1354.

Although Appellants argue that the claims are not directed to comparing stored and input data and rules, i.e., data analysis, Appellants do not provide sufficient explanation as to why the claims are not directed to the abstract idea set forth by the Examiner. Rather, Appellants' arguments merely restate and summarize claim limitations and provide excerpts from the Specification. Reply Br. 3; see also App. Br. 1–6 (“section III”) and 8–27. Moreover, Appellants acknowledge claim 1 is “at most addressing a business challenge, such as improving the speeds of processing, analyzing, and presentation of tracking orders.” App. Br. 27. However, as the Examiner correctly points out, the features for improving the speeds of processing, analyzing, and presentation “are not claimed” and “do not limit the scope of the claim language.” Ans. 3; See *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (Limitations not appearing in the claims cannot be relied upon for patentability).

Because claim 1 involves merely the concept of tracking and analyzing information, which the case law precedent cited above characterizes as being directed to an abstract idea, we agree with the Examiner's determination that claim 1 is directed to an abstract idea. Non-Final Act. 2.

We now address the second step of the *Alice* framework. Under the second step, the Examiner determines the claims do not recite additional

limitations amounting to significantly more than the claimed abstract idea, because the additional limitations only involve routine and conventional activity. Non-Final Act. 3. Specifically, the Examiner finds that “tracking web usage data represents insignificant data-gathering steps” and that “taken as a whole, the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity.” *Id.*

Appellants argue claim 1 amounts to significantly more than an abstract idea because it is directed to speeding up the processing, analyzing and presentation of tracking order data to overcome a business challenge and is an improvement to another technology or technical field. App. Br. 48–49; Reply Br. 4–5.

Appellants’ argument is not persuasive. As discussed above, the features for improving the speeds of processing, analyzing, and presentation are not claimed. Ans. 3; *See In re Self*, 671 F.2d at 1348.

Although Appellants refer to paragraphs 2–8 of the Specification, they do not identify any specific claimed features recited therein that result in improvements to another technology or technical field or are beyond well-understood, routine, conventional activity. App. Br. 48–49; Reply Br. 4–5.

We note the Federal Circuit has routinely held that using a computer to perform tasks more quickly or more accurately is not sufficient to render a claim eligible. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015). Appellants have not explained how the claimed invention improves speeds of processing, analyzing, and presentation via an improvement to the computer implementation beyond what is routine and conventional, as opposed to merely an improvement to the business process. As such, we fail to see how the claimed invention is something other than

the generic computer implementation of an improved business practice, which is insufficient for patent-eligibility. *See DDR Holdings, LLC v. Hotels.com et al.*, 773, F.3d 1245, 1256 (Fed. Cir. 2014).

Accordingly, claim 1, when its limitations are considered both individually and as an ordered combination, amounts to nothing more than an attempt to patent the abstract idea embodied in the steps of the claim. Thus, the additional limitations of claim 1 fail to transform the nature of the claim into patent-eligible subject matter. *See id.*

For the above reasons, Appellants fail to apprise us of error in the Examiner's determination that claim 1 is directed to patent-ineligible subject matter. Independent claims 4, 10, 11, and 23 recite similar limitations as claim 1, and Appellants argue they are allowable for the same reasons as argued for claim 1. *See App. Br. 6–7, 27–28, and 48–49.* Appellants do not present arguments for dependent claims 2, 3, 5–9, and 12–22 separate from those presented for the independent claims. *See App. Br. 6–49.* Accordingly, we sustain the Examiner's rejection of claims 1–23 as being directed to patent-ineligible subject matter.

DECISION

We AFFIRM the decision of the Examiner to reject claims 1–23 as being directed to patent-ineligible subject matter.

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