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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES WILSON, JEFFREY MCNEILL, MICHAEL DAVIS,
MARK SILVA, and GENEVIEVE C. COMBES

Appeal 2016-001116
Application 13/027,114
Technology Center 3600

Before JASON V. MORGAN, JOSEPH P. LENTIVECH, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from a non-final rejection of claims 1, 3–8, 14, and 16–25.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as ZipRealty, Inc. App. Br. 2.

² Claims 2 and 15 have been cancelled, and claims 9–13 have been withdrawn. App. Br., Claims App'x.

Introduction

Appellants describe the invention as relating to “tracking real estate agents based on their geographic location and further generating agent expertise data.” Spec. ¶ 3 (Field). The Specification discusses a variety of benefits from accurately tracking, recording, and using information related to an agent’s visits to properties, such as improving the ability of agents and their companies to track and use information in an automated manner, and enabling users to identify agents with appropriate expertise. *See* Spec. ¶¶ 6–7, 26–40. Claim 1 is illustrative of Appellants’ claims on appeal, shown here with disputed limitations in *italics*:

1. A method, implemented by a computer system associated with a real estate service, for tracking property visits of a real estate agent associated with the real estate service, the method comprising:

receiving geographic coordinates associated with a mobile device of the real estate agent;

determining a current location of the real estate agent based on the geographic coordinates received;

matching the current location of the real estate agent with a specific Multiple Listing Service (MLS) listed property located at or near the current location of the real estate agent;

determining that the real estate agent has performed a tour of the specific MLS-listed property based on the matching of the current location of the real estate agent with the specific MLS listed property;

based on determining that the real-estate agent has performed the tour of the specific MLS-listed property, updating an entry of a database using MLS information about the specific MLS-listing property, the entry comprising a plurality of variables, each variable of the plurality of variables reflecting an expertise of the real estate agent in performing tours of properties with a certain attribute, the updating of the

entry comprising incrementing a tracking value maintained for at least a portion of the plurality of variables[; and]

causing display, on a client device, of expertise information of the real estate agent based on information stored in the database.

App. Br. 29 (Claims App'x).

Rejections

Claims 1, 3–8, 14, and 16–25 stand rejected under 35 U.S.C. § 101 as unpatentably directed to non-statutory subject matter. Non-Final Act. 2–3.

Claims 1, 3, 6, 7, 14, 16, 19, 23, and 25 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Desiderio (US 2003/0064705 A1; Apr. 3, 2003), Wilson (2011/0275441 A1; Nov. 10, 2011), Cardella (US 2011/0078138 A1; Mar. 31, 2011), and the IBM Knowledge Center, “Quickly Filter Data Using the Filter Drop-down Button,” (Dec. 9, 2010) (available at www.ibm.com/support/knowledgecenter/SSTQPQ_7.5.0/com.ibm.swg.im.cognos.impadmin.7.5.0.doc/impadmin_id12578QuicklyFilterDataUsingtheFilterDrop-dow.html; last accessed Feb. 20, 2018) (hereafter “IBM”). Non-Final Act. 3–11.

Claims 20–22 and 24 stand rejected under § 103(a) as unpatentable over Desiderio, Wilson, Cardella, IBM, and Official Notice. Non-Final Act. 11–14.³

³ In the rejections of claims 20, 22, and 24, the Examiner cites Fawaz (US 2010/0082406 A1; Apr. 1, 2010) in support of the proposition for which the Examiner takes Official Notice. Although the Examiner and Appellants both summarily characterize the rejection of claim 21 as being based on Official Notice, the basis of the rejection is that claim 21 recites nonfunctional descriptive matter. *See* Non-Final Act. 12–13.

Claims 4, 5, 8, 17, and 18 stand rejected under § 103(a) over Desiderio, Wilson, Cardella, IBM, and Murchison (US 2007/0266081 A1; Nov. 15, 2007). Non-Final Act. 14–17.

ISSUES

- (1) In the 35 U.S.C. § 101 rejection of claim 1, did the Examiner err by determining the claim is unpatentably directed to an abstract idea without reciting “significantly more”? *See* App. Br. 9–17;⁴ *see also* Reply Br. 2–16.
- (2) In the 35 U.S.C. § 103(a) rejection of claim 1, did the Examiner err by finding the prior art teaches or suggests the disputed limitations identified above in the Introduction? *See* App. Br. 18–25;⁵ *see also* Reply Br. 16–21.
- (3) In the 35 U.S.C. § 103(a) rejection of claims 20–22 and 24, did the Examiner err in taking Official Notice? *See* App. Br. 25–26.

ANALYSIS

1. 35 U.S.C. § 101 Rejection of Claim 1

“Issues of patent-eligible subject matter are questions of law and are reviewed without deference.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1369 (Fed. Cir. 2011). To determine if a claim recites patentable subject matter under 35 U.S.C. § 101, the Supreme Court has set forth a two-part test. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014).

⁴ For the § 101 rejection of claims 3–8, 14, and 16–25, Appellants present no substantive arguments separate from those presented for claim 1.

⁵ For the § 103(a) rejections of claims 3–8, 14, 16–19, 23, and 25, Appellants present no substantive arguments separate from those for claim 1.

A. Part One of the Alice Analysis

“First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts” of “laws of nature, natural phenomena, and abstract ideas.” *Alice*, 134 S. Ct. at 2355. A court must be cognizant that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas” (*Mayo Collaborative Servs. v. Prometheus Lab., Inc.*, 566 U.S. 66, 71 (2012)), and “describing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Instead, “the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Appellants argue “[t]he Examiner’s assertion that the claims are ‘drawn to an abstract idea’ is unsupported and insufficient” and, thus, fails to set forth a prima facie case of unpatentability. App. Br. 9 (emphasis omitted); *see id.* at 10. Specifically, Appellants contend the Examiner erred by failing to provide any authority to support the determination that claim 1 is directed to an idea that is well known or abstract. App. Br. 10; *see also* Reply Br. 3–4 (arguing failure to provide “substantial evidence” violates the Administrative Procedures Act), 4–5 (arguing the § 101 rejection is erroneously conclusory), 5–6 (arguing the Examiner’s failure to cite “authoritative documentation” is inconsistent with Supreme Court, Federal Circuit, and Patent Trial and Appeal Board precedent).

Appellants’ arguments are unpersuasive. As the Federal Circuit has clarified,

“the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). The Patent and Trademark Office (“PTO”) satisfies its initial burden of production by “adequately explain[ing] the shortcomings it perceives so that the applicant is properly notified and able to respond.” *Hyatt*, 492 F.3d at 1370. In other words, the PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant . . . [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (brackets in original).

Examiners may rely on their own technical expertise to describe the knowledge and skills of a person of ordinary skill in the art. *In re Berg*, 320 F.3d 1310, 1315 (Fed. Cir. 2003) (Examiners are “persons of scientific competence in the fields in which they work,” and their findings are “informed by their scientific knowledge”); *see also* MPEP § 2141 (II)(C) (Resolving the Level of Ordinary Skill in the Art) *and* MPEP § 2144.03 (“an examiner may . . . rely on ‘common knowledge’ in making a rejection”). Here, we find the Examiner’s rejection satisfies the initial burden of production because the Examiner finds and reasons that claim 1 is “drawn to an abstract idea” as being directed to: (1) “the concept of generating an agent’s ranking based on a database containing agents’ history” and (2) “[g]enerating expertise records for real estate agents as they visit properties

for the purpose of helping prospective clients to determine a suitable client-agent match is well-known and fundamental practice in real estate and e-commerce.” Non-Final Act. 2. By setting forth a prima facie case that claim 1 is drawn to an abstract idea, including by citing to relevant precedent, *see* Ans. 3–5, the Examiner shifted the burden of response on this issue to Appellants.

Appellants argue the Examiner “fail[s] to consider the claims as a whole” and errs by providing “no argument or reasoning with respect to particular claim elements as why they are found by the Examiner to be abstract ideas.” App. Br. 11 (emphasis omitted). This is unpersuasive. There is no requirement to find “particular claim elements . . . to be abstract ideas.” Instead, the question is whether, as a whole, the claim is “drawn to” an abstract idea. *See Alice*, 134 S. Ct. at 2352. We agree with the Examiner that, as a whole, considering all steps and limitations, claim 1 is drawn to the abstract “concept of generating an agent’s ranking based on a database containing agents’ history.” Non-Final Act. 2; Ans. 4 (explaining “[t]he summarization of the claims, ‘generating expertise records for real estate agents as they visit properties for the purpose of helping prospective clients determine a suitable client-agent match,’ clearly demonstrates the examiner considered the disputed claims as a whole”).

Appellants also argue the claims are not directed to an abstract idea. App. Br. 12–14; Reply Br. 6–7. Appellants point to the recited requirements of “matching the current location of the real estate agent with a specific Multiple Listing Service (MLS) listed property located at or near the current location of the real estate agent” and “determining that the real estate agent has performed a tour of the specific MLS-listed property based on the

matching of the current location of the real estate agent with the specific MLS listed property” as non-abstract. App. Br. 13; *see also id.* at 13–14 (contending claim 1 is directed neither to a mathematical formula nor a fundamental economic practice) *and* Reply Br. 7 (contending the claim 1 is unlike the claims at issue in *Dealertrack, Inc. v. Huber*, 674 F.3d 1315 (Fed. Cir. 2012)).

We disagree with Appellants. While claim 1 recites specific limitations such as “geographic coordinates” and an “MLS-listed property,” we agree with the Examiner that the steps of receiving location information for determining a real estate agent’s location, matching the location with MLS-listed properties (i.e., real estate industry standard property information), updating a database based on the matching, and “causing display, on a client device, of expertise information of the real estate agent based on information stored in the database” essentially “describe a [] method for generating expertise records for real estate agents as they visit properties” (Ans. 4). The technological aspects are conventional, and the claim steps are akin to other court-identified abstract ideas such as allowing users to purchase objects during an online activity—i.e., a method of organizing human activities—and obtaining and comparing intangible data—i.e., an idea of itself. *See Gametek LLC v. Zynga, Inc.*, No. CV-13-2546 RS, 2014 WL 1665090, at *1–2, 4–7 (N.D. Cal. 2014), *aff’d*, 597 F. App’x 644 (Fed. Cir. 2015).

Claim 1 is unlike the claims at issue in *DDR Holdings, LLC v. Hotels.com L.P.*, which the Federal Circuit found not to be unpatentably abstract because they were “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer

networks” because they addressed a technical issue unique to Internet website problems, 773 F.3d 1245, 1257 (Fed. Cir. 2014), or those in *Enfish, LLC v. Microsoft Corp.*, which were “directed to a specific implementation of a solution to a problem in the software arts,” 822 F.3d 1327, 1339 (Fed. Cir. 2016). Instead, of being rooted in computer technology or directed to the software arts, claim 1 recites conventional technologies incidental to “[g]enerating expertise records for real estate agents as they visit properties for the purpose of helping prospective clients to determine a suitable client-agent match,” and thus is drawn to an abstract idea, *viz.*, a “fundamental practice in real estate and e-commerce.” Non-Final Act. 2.

B. Part Two of the Alice Analysis

Next, we consider the claim limitations “both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78). The Supreme Court has “described step two of this analysis as 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.* (quotation omitted).

Appellants argue claim 1 recites significantly more than an abstract idea because it “recites multiple hardware components that are not only specially-configured to perform particular operations, but also to work together to achieve the operations defined by the method.” App. Br. 15. Appellants contend that claim 1 solves a technological problem because

under conventional industry practice, if real estate agents are engaged in several tours each day, it is often cumbersome for the agents to record and keep track of the houses they actually

visit on a given day. An agent would have to painstakingly maintain a log of all the places she visited and provide such information to a real estate service management application. Because of the number of tours an agent performs in a day, the agent may also potentially miss entering information regarding some of the houses the agent may have toured.

Id. at 15–16 (citations omitted).

This is unpersuasive. The technology limitations of claim 1 are simply well known, routine, generic technology features that are incidental to and do not add significantly more to the abstract idea of “generating expertise records for real estate agents as they visit properties.” Ans. 4. The use of generic technology limitations “to lend speed or efficiency to the performance of an otherwise abstract concept does not meaningfully limit claim scope for purposes of patent eligibility.” *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1286 (Fed. Cir. 2013) (*aff’d Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014)).

Appellants contend claim 1’s limitations are no more conventional than those of the claim at issue in *DDR Holdings*. App. Br. 9–11. This is unpersuasive. The claim at issue in *DDR Holdings* was found *not* to be directed to an abstract idea, but instead was directed to a “particular Internet-centric problem”—it recited particular web server technology “to automate the creation of a composite web page by an ‘outsource provider’ that incorporates elements from multiple sources in order to solve a problem faced by websites on the Internet.” 773 F.3d at 1259. Appellants’ analogy to *DDR Holdings* is unpersuasive. While claim 1 may automate what otherwise would be a cumbersome manual process and alleviate agents from painstakingly logging information, these are benefits of the use of routine technology for automation, and are not directed to any underlying

technological improvement. For the same reasons, we also find Appellants' related arguments unpersuasive. *See* App. Br. 11–14 *and* Reply Br. 8–14.

Appellants further contend claim 1 recites significantly more than an abstract idea under the second prong of *Alice* because it does not preempt any basic tools of science or technology. App. Br. 16–17; Reply Br. 15.

Appellants contend claim 1

recites a particular way to determine a current location of a real estate agent (e.g., “based on the geographic coordinates received” from the mobile device of the real estate agent), a particular way for determining the real estate agent has performed a tour of a property (e.g., based on matching the current location of the real estate agent with a specific MLS listed property), a particular way for tracking the expertise of the real estate agent (e.g., by “updating an entry of a database using MLS information”), and maintaining information regarding a particular type of expertise (e.g., “an expertise of the real estate agent in performing tours of properties with a certain attribute”).

App. Br. 16.

This is unpersuasive. “[T]he absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). A claim drawn to an abstract idea must recite “significantly more.” *Alice*, 134 S. Ct. at 2358. Limitations such as “geographic coordinates” broadly encompass virtually any practicable location-based service technology. “MLS information” is the *de facto* standard database for the real estate industry and as a practical matter does not add significantly more to an abstract idea of using real estate property information. Claim 1’s limitations, taken alone and as an ordered combination, do not recite significantly more than the abstract idea to which it is drawn.

Thus, we sustain the Examiner's 35 U.S.C. § 101 rejection of claim 1. For the same reasons we sustain the § 101 rejection of claims 3–8, 14, and 16–25, for which Appellants offer no substantive arguments separate from those for claim 1.

2. 35 U.S.C. § 103(a) Rejection of Claim 1

A. Determining the Real Estate Agent Performed a Tour

In rejecting claim 1 under pre-AIA 35 U.S.C. § 103(a), the Examiner finds Wilson teaches “determining that the real estate agent has performed a tour of the specific MLS-listed property based on the matching of the current location of the real estate agent with the specific MLS listed property,” as recited by claim 1. Non-Final Act. 4–5 (citing Wilson ¶¶ 87, 91–93, 106, 110–12, Figs. 4, 5, 12, 13). Appellants argue the Examiner errs because “*Wilson* concerns a ‘social game’ in which players may ‘check-in’ to houses offered for sale,” and this check-in process “is not the same as “determining [a] *real estate agent* has *performed a tour*,” as recited. App. Br. 19 (citing Wilson ¶ 95); *see also* Reply Br. 17.

Appellants' argument is unpersuasive. The Examiner finds, and Appellants do not contest, that Desiderio teaches determining location of a real estate agent and matching that location with nearby a MLS-listed property, as recited in the first three steps of claim 1. Non-Final Act. 4 (citing Desiderio ¶¶ 37, 39–41, Figs. 1–4). In view of Desiderio, the “user” of Wilson, which is directed to a real estate tracking system using MLS information (*see* Wilson ¶ 3, 11), fairly maps to the “real estate agent” of claim 1. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (explaining each reference cited by the Examiner must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a

whole). Also, we agree with the Examiner that “determining that an agent has toured a property . . . is a conclusion or meaning that the system attaches to the matching of an agent’s location data with a specific property location.” Ans. 8 (citing Appellants’ Spec. ¶ 43, Fig. 5). In view of Appellants’ Specification, the broadest reasonable interpretation of claim 1’s requirement for “determining that the real-estate agent has performed a tour . . . based on matching of the current location of the real estate agent with the specific MLS listed property” step is that *if* the real estate agent’s current location matches that of a specific MLS listed property *then* there it is determined that the real estate agent has performed a tour of that property.

Appellants argue the Examiner’s mapping of Wilson’s “check-in” to “determining that the real estate agent has performed a tour” effectively ignores words in the claim, such as “tour.” Reply Br. 17. We disagree. Appellants’ Specification discusses a similar “property check-in” feature that, based simply on the real estate agent’s location, the “service determines that the agent is currently at a particular property for touring that property.” Spec. ¶ 29. In other words, Appellants’ Specification equates the agents’ presence at the location with determining the agent has toured the location. Although the Specification describes the possibility of “additional verification mechanisms to ensure accuracy of such a determination” (Spec. ¶ 29; *see also id.* ¶ 35), we decline to limit the meaning of “determining that the real estate agent has performed a tour” based on unclaimed requirements described in Appellants’ Specification. *See In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993) (explaining that while claims are interpreted in light of the Specification, it is inappropriate to read limitations from the specification into the claims); *In re Bigio*, 381 F.3d 1320, 1325

(Fed. Cir. 2004) (“[T]his court counsels the PTO to avoid the temptation to limit broad claim terms solely on the basis of specification passages.”). Thus, given the user in Wilson maps to the recited “real estate agent,” Wilson’s determining the user has checked into a location teaches, or at least suggests, the recited requirement of “determining that the real estate agent has performed a tour.”

*B. Updating a Database using MLS Information about the Property
Toured by the Real Estate Agent*

In the § 103(a) rejection of claim 1, the Examiner finds Cardella, in view of the teachings of Desiderio and Wilson, teaches the second disputed limitation of:

based on determining that the real-estate agent has performed the tour of the specific MLS-listed property, updating an entry of a database using MLS information about the specific MLS-listing property, the entry comprising a plurality of variables, each variable of the plurality of variables reflecting an expertise of the real estate agent in performing tours of properties with a certain attribute, the updating of the entry comprising incrementing a tracking value maintained for at least a portion of the plurality of variables,

as recited. Non-Final Act. 5–7 (citing Cardella ¶¶ 51, 53, 119–22, 157).

Appellants argue the Examiner errs because:

although *Cardella* discusses calculating “areas of expertise” for real estate agents, *Cardella* does not contemplate “determining the real estate agent has performed a tour” of such a property, let alone “updating an entry of a database using MLS information about the specific MLS-listing property toured by the real estate agent,” based on determining the real estate agent performed a tour, as recited.

App. Br. 20 (citing Cardella ¶ 157) (further arguing “the ‘areas of expertise’ calculated in *Cardella* pertain only to an agent’s history of transactions in

selling or purchasing homes”); *see also* Reply Br. 18–19. Appellants also contend Desiderio and Wilson do not remedy the deficiency of Cardella, and in particular “*Wilson* does not contemplate ‘updating an entry of a database using MLS information about the specific MLS-listing property toured by the real estate agent.’” *Id.* at 21.

The relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). As discussed above, the Examiner finds, and we agree, that Wilson, in view of Desiderio, teaches determining an agent has performed a tour, as recited. We also agree with the Examiner’s finding that Cardella, in view of the teachings of Desiderio and Wilson, teaches “updating an entry of a database using MLS information about the specific MLS-listing property.” *See* Non-Final Act. 6–7 (finding and reasoning that in the combination of elements from the references, “each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable” (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 415–16 (2007))); *see also* Ans. 9–10.

Appellants contend that because Cardella teaches determining an agent’s expertise based on “homes ***sold by the agent***,” therefore “the scope of *Cardella* is limited to expertise as it pertains to a transactional history, and that *Cardella* does not contemplate retrieving information from ‘check-in’ data sources such as those provided by *Wilson*.” App. Br. 24. This is unpersuasive. Appellants read Cardella too narrowly. Cardella teaches using databases to match real estate agent experience with potential

customers. Cardella Title, Abstract. Cardella teaches determining multiple types of expertise for the agent, such as with particular neighborhoods, house types, price ranges, etc., and storing this information for subsequent use in matching customers with agents. *See id.* ¶¶ 157–68. Cardella specifically teaches using MLS information as part of this database system for matching agents with customers based on agent expertise. *Id.* ¶ 103. Thus, Cardella teaches or at least suggests updating multiple expertise-related variables using MLS information, as recited. Accordingly, we agree with the Examiner that the combined teachings of Desiderio, Wilson, and Cardella render obvious the second disputed limitation.

C. Motivation to Combine Desiderio, Wilson, and Cardella

Finally, with respect to the § 103(a) obviousness rejection of claim 1, Appellants argue the Examiner errs because there would have been no motivation for an ordinarily skilled artisan to combine the teachings of Cardella with the teachings of Desiderio and Wilson. App. Br. 22–24; Reply Br. 19–21. Specifically, Appellants contend that because there would have been no motivation to combine Cardella with Wilson because “*Cardella* only concerns an expertise of real estate agents as it pertains to the agents’ transactional history,” and “*Cardella* does not contemplate retrieving information from ‘check-in’ data sources such as those provided by *Wilson*.” App. Br. 23, 24.

The Examiner responds that the rejection does not propose modifying Cardella with the teachings of Wilson, rather:

“Cardella may further modify the proposed combination of Desiderio and Wilson references such that the information management monitors and mines new property information from the check-in data sources in order to update the real estate

agent history.” Cardella provides sufficient motivation for the aforementioned combination of references by teaching the system may further monitor and mine additional external sources, which could include check in data sources (such as the player check in histories described by Wilson at Paragraph 0095).

Ans. 10–11 (quoting Non-Final Act. 6) (further explaining that while “Cardella may only discuss deriving an agent’s experience in terms of . . . transactional history, the reference clearly does not limit external sources to those pertaining only to sold homes” (citing Cardella ¶ 103)).

Appellants reply that Cardella’s discussion of deriving agent expertise only in terms of transactional history necessarily limits the teachings of Cardella to use with external sources pertaining only to transactional history. Reply Br. 20. We disagree with Appellants. It is axiomatic that “[a] reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect.” *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985) (emphasis omitted). Appellants in effect argue Cardella’s “transactional experience” disclosure focus teaches away from the use of its teachings with Wilson. A teaching away, however, requires a reference to actually criticize, discredit, or otherwise discourage the claimed solution, *see In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004), and such has not been shown to be the case here.

Appellants do not point to any evidence of record that the Examiner’s combination of teachings from Desiderio, Wilson, and Cardella would be “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters. Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550

U.S. at 418–19). Nor have Appellants provided objective evidence of secondary considerations which our reviewing court guides “operates as a beneficial check on hindsight.” *Cheese Sys., Inc. v. Tetra Pak Cheese and Powder Sys., Inc.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013). The Examiner’s findings are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle” because the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21. We are persuaded the claimed subject matter exemplifies the principle that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 416.

D. Obviousness Conclusion

Accordingly, we sustain the § 103(a) rejection of claim 1. For the same reasons we sustain the rejections of claims 3–8, 14, 16–19, 23, and 25, for which Appellants present no substantive arguments separate from those for claim 1. In doing so, as consistent with the foregoing, we adopt as our own the Examiner’s findings and reasons as set forth in the Non-Final Action and in the Answer.

*3. 35 U.S.C. § 103(a) Rejections of Claims 20–22 and 24*⁶

In rejecting claims 20, 22, and 24, the Examiner relies on Fawaz in combination with Desiderio, Wilson, and Cardella, taking Official Notice based on Fawaz “that it is old and well known within the computer arts to use arithmetic to derive one metric from two or more readily available metrics” (claim 20), “that it is also old and well known in the computer arts

⁶ Claims 20 and 24 depend from claim 1; claims 21 and 22 depend from claim 20. App. Br. 34–35 (Claims App’x).

to display that ranking when searching for a real estate agent” (claim 22), and “that it is old and well known in the computer arts to apply a criteria filter and derive a ranking based on the filtered results” (claim 24). Non-Final Act. 11, 13, 14 (collectively citing Fawaz Figs. 1, 2, ¶ 8). The Examiner rejects claim 21 because its recited limitation “wherein the ranking is one of platinum, gold, or bronze” constitutes nonfunctional descriptive material. *Id.* at 12–13 (citing MPEP § 211.05).⁷

Appellants argue the Examiner errs in rejecting claims 20–22 and 24 because “the Examiner has failed to ‘provide specific factual findings *predicated on sound technical and scientific reasoning*’ to support taking Official Notice.” App. Br. 25; *see also id.* at 26. We disagree with Appellants. Regarding claims 20, 22, and 24, we agree with the Examiner’s finding that Fawaz relevantly “discloses features for ranking real estate agents based on their activities or job performance” by its examples of “ranking agents primarily in terms of the number of homes sold”. Ans. 12 (citing Fawaz ¶¶ 20, 25, 28, 34). In other words, Fawaz teaches use of agent metrics to rank agents. As discussed above, Wilson and Desiderio teach determining the use of houses toured as a metric for ranking agents. Thus, the Examiner provides specific factual findings, predicated on sound technical reasoning, for the rejections of claims 20, 22, and 24. On the record before us, we agree that Fawaz, in view of Wilson, Desiderio, and Cardella, and in view of the knowledge of the ordinarily skilled artisan, would have rendered obvious claims 20, 22, and 24. Ans. 11–13; Non-Final

⁷ Appellants do not rebut the rejection’s determination that claim 21 recites nonfunctional descriptive matter that is entitled to no patentable weight. We agree with the Examiner and summarily sustain the rejection of claim 21.

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Act. 11–14; *see Leapfrog v. Fisher-Price*, 485 F.3d at 1162; *Cheese Sys. v. Tetra Pak Cheese*, 725 F.3d at 1352; *KSR*, 550 U.S. at 420–21.

Accordingly, we sustain the rejections of claims 20–22 and 24. In doing so, we adopt the findings and reasons of the Examiner.

DECISION

For the above reasons, we affirm the rejections of claims 1, 3–8, 14, and 16–25 under 35 U.S.C. §§ 101 and 103(a).

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