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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
13/610,167 09/11/2012 SAPHURA SAFAVI LONG 1002U001 3322

41461 7590 08/28/2017
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EXAMINER

SHORTER, RASHIDA R

ART UNIT PAPER NUMBER

3681

NOTIFICATION DATE DELIVERY MODE

08/28/2017

ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SAPHURA SAFAVI LONG

Appeal 2016-001392¹
Application 13/610,167²
Technology Center 3600

Before JOSEPH A. FISCHETTI, NINA L. MEDLOCK, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of
claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our Decision considers Appellant’s Appeal Brief (“Appeal Br.,” filed June 15, 2015) and Reply Brief (“Reply Br.,” filed Nov. 12, 2015), as well as the Examiner’s Final Office Action (“Final Act.,” mailed Jan. 15, 2015), Advisory Action (“Adv. Act.,” mailed Apr. 10, 2015), and Answer (“Ans.,” mailed Sept. 11, 2015).

² Appellant identifies Saphura Safavi Long as the real party in interest. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The invention “generally relates to electrical computers and digital data processing systems in a network environment, and in particular it relates to customer service and network-based communications between vendors and customers.” Spec. ¶ 2. Claims 1, 12, and 16 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method, performed exclusively over a computer network by at least one special purpose computer of a vendor, the vendor having a number of employees, the method comprising:

establishing a data communication interface having a network address on the computer network for the at least one special purpose computer of the vendor, the data communication interface allowing communication devices of a plurality of customers of the vendor to transmit data to and receive data from the at least one special purpose computer of the vendor;

establishing a data connection between a transaction database of the vendor and the at least one special purpose computer of the vendor, for accessing stored historical transaction data of purchase transactions between the vendor and the plurality of customers, the stored historical transaction data including an indication of employees involved with each transaction between the vendor and the plurality of customers;

establishing a data template for presenting vendor-specific data and customer-specific data from the at least one special purpose computer of the vendor on displays of the communication devices of the plurality of customers;

receiving at the data communication interface an electronic request from a communication device of a customer to access the at least one special purpose computer of the vendor, the electronic request including an identification of the customer;

in response to the electronic request:

identifying from the transaction database, historical purchase transactions between the customer and the

vendor, including those employees of the vendor involved with the historical purchase transactions;

retrieving, from an employee database of the at least one special purpose computer of the vendor, contact information for only those employees of the vendor involved with the historical purchase transactions of the customer, the contact information for initiating direct communications between the communication device of the customer and those employees;

generating, from the data template, the vendor-specific data, the customer-specific data, and the contact information, a customer-specific data template for display on the communications device of the customer via the computer network;

displaying, on the communication device of the customer, the customer-specific data template including the selectable options for communicating with only those employees of the vendor involved with the historical purchase transactions of the customer, the selectable options including the contact information for only those employees;

receiving, from the communication device of the customer, a selection of one of the selectable options; and

initiating a direct communication between the communications device of the customer and at least one of those employees using the contact information in accordance with the selection.

REFERENCES

The Examiner relies on the following prior art in rejecting the claims on appeal:

Retzbach et al. (“Retzbach”)	US 2006/0020477 A1	Jan. 26, 2006
Ivanovic	US 2011/0071950 A1	Mar. 24, 2011
Dapoz	US 2012/0158549 A1	June 21, 2012
Wegner et al. (“Wegner”)	US 2013/0036001 A1	Feb. 7, 2013

REJECTIONS

Claims 1–20 are rejected under 35 U.S.C. § 101 as non-statutory subject matter.³

Claims 1–8 and 10–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Retzbach, Wegner, and Dapoz.

Claim 9 is rejected under 35 U.S.C. § 103(a) as unpatentable over Retzbach, Wegner, Ivanovic, and Dapoz.

ANALYSIS

Non-Statutory Subject Matter

In rejecting the claims under 35 U.S.C. § 101 for being directed to non-statutory subject matter, the Examiner analyzes the claims using 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. Specifically, pursuant to the first step, the Examiner finds the claims are directed to “improving customer relationship management through an entity’s online community,”

³ The rejection references claims 1–24 (Final Act. 2; Ans. 3), yet only claims 1–20 are pending in the application. As such, we understand the rejection includes claims 1–20, and we consider the inclusion of claims 21–24 to be a typographical error.

which is a method of organizing human activities and, therefore, an abstract idea. Final Act. 2; Ans. 3. Under the second step, the Examiner finds the claims do not include additional elements amounting to significantly more than the abstract idea because the additional elements are generic computer structures performing generic computer functions that are well-understood, routine, and conventional activities previously known in the pertinent industry. Final Act. 2; Ans. 3.

Appellant argues the claims are not directed to an abstract idea pursuant to the first step of the patent-eligibility analysis because the claims recite a system of interconnected physical devices that are implemented in a specialized manner to control, display, and manage vendor-customer communications, which, according to Appellant, is in stark contrast to the recitation of a general computer performing generic computer functions to carry out an abstract idea. Appeal Br. 9–10. We disagree.

Contrary to Appellant’s argument, there is no indication that the claimed computing components are something other than generic, well-known components. For example, the Specification explains that the “servers, like any common personal computer, include well-known processors, electronic memory, network communication hardware, user interfaces, input/output devices, operating system software, and application software suitable for accomplishing the functions described herein.” Spec. ¶ 33. The Specification further explains that “[e]ach of the employee computers 125 and the customer computers 130 may be any suitable computing or communication device used to accomplish the processes described herein . . . for example, a personal computer, laptop computer, notebook computer, mobile telephone, smartphone, tablet, personal digital

assistant or like device of the type commonly manufactured by IBM CORP, DELL CORP. and APPLE CORP.” *Id.* ¶ 37. Furthermore, apart from the generic computing components, the claims recite the steps of: allowing communication between customers and a vendor; accessing the vendor’s stored historical transaction data, including an indication of employees of the vendor involved with each transaction; establishing a data template for presenting data to the customer; identifying historical purchase transactions between the customer and the vendor; retrieving contact information for only those employees involved with the historical purchase transactions of the customer; generating a customer-specific data template from the data template; displaying the customer-specific data template including selectable options for communicating with only those employees involved with the historical purchase transactions of the customer; receiving a selection of the one of the selectable options from the customer; and initiating a direct communication between the customer and at least one of the employees, which are all steps for “improving customer relationship management through an entity’s online community.” As such, we fail to see how the claimed invention amounts to something other than the generic computer implementation of the abstract idea of “improving customer relationship management through an entity’s online community,” which is not patent-eligible. *See, e.g., Alice*, 134 S. Ct. at 2358 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”).

Appellant further contends that the claims are not directed to an abstract idea because they recite a specialized system for controlling the display and management of contact information and the initiation of direct

communications between a customer and specific personnel of a vendor, and, therefore, do not preempt the abstract idea. Appeal Br. 10. This argument does not apprise us of error.

Beginning with preemption, although preemption may be the concern driving the exclusion of abstract ideas from patent-eligible subject matter, preemption is not the test for eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354).

Moreover, even if we agree with Appellant that the claims recite a specialized system for managing communications between a customer and specific personnel of a vendor, the specific limitations do not separate the claimed invention from the abstract idea of “improving customer relationship management through an entity’s online community.” For example, a method that, in response to receiving an electronic request from a customer’s communication device, identifies historical purchase transactions between the customer and the vendor, including those employees of the vendor involved with the customer’s historical purchase transactions, and displays, on the customer’s communication device, a customer-specific data template including selectable options for communicating with only those employees, is still a method for “improving customer relationship management through an entity’s online community.” Rather than distinguishing the claimed invention from the abstract idea, the specific limitations are tied to the abstract idea and simply suggest that the

Examiner’s characterization is at a high level of abstraction, which is not persuasive of error. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”).

Appellant also argues that the claims are not directed to an abstract idea because they recite specially programmed computer hardware and software to generate information that is displayed to a customer, which is a concrete and tangible result. Appeal Br. 11 (citing *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335 (Fed. Cir. 2013)).⁴ To the contrary, our reviewing court has explained that information is an intangible and that gathering and analyzing information of a specified content, then displaying the results, without any inventive technology for performing these functions, falls within the realm of abstract ideas. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016). As set forth above, the claimed computer components are generic, and Appellant’s reliance on the claimed invention’s ability to display information via generic computer components does not apprise us of error in the Examiner’s finding that the claims are directed to an abstract idea.

⁴ The Supreme Court vacated this decision and remanded the case for further consideration in light of *Alice. WildTangent, Inc. v. Ultramercial, LLC*, 134 S. Ct. 2870 (2014).

Appellant additionally argues that “improving customer relationship management through an entity’s online community” is not an abstract idea. Appeal Br. 10–11. According to Appellant, the concept of “improving customer relationship management through an entity’s online community” is not similar to any concept that the courts have recognized as an abstract idea. Appeal Br. 10–11; Reply Br. 2–3. We disagree.

Here, the Examiner finds the concept of “improving customer relationship management through an entity’s online community” is a method of organizing human activities and, therefore, an abstract idea. Final Act. 2; Ans. 3. Courts indeed have found certain methods of organizing human activities, such as “mitigating settlement risk,”⁵ “transaction performance guaranty,”⁶ and “budgeting”⁷ to be abstract ideas. Like these concepts, the concept of “improving customer relationship management through an entity’s online community” is a business practice. As such, we see no meaningful distinction between these concepts held to be abstract ideas and the concept of “improving customer relationship management through an entity’s online community.” We, thus, are not apprised of error in the Examiner’s determination that “improving customer relationship management through an entity’s online community” is an abstract idea.

After considering Appellant’s arguments regarding the first step of the patent-eligibility analysis, we are not persuaded that the Examiner erred in finding the claims are directed to the abstract idea. Accordingly, we turn to

⁵ *Alice*, 134 S. Ct. at 2356.

⁶ *buySAFE Inc. v. Google, Inc.*, 765 F.3d 1350, 1354–55 (Fed. Cir. 2014).

⁷ *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367–68 (Fed. Cir. 2015).

the second step. Pursuant to this step, Appellant argues the claims include additional elements amounting to significantly more than the abstract idea because the claimed invention results in improvements to a computer, is performed on a particular machine, and adds unconventional steps.

Appeal Br. 13–15; Reply Br. 3–5. For the reasons set forth below, these arguments do not apprise us of error.

In regard to the assertion that the claims recite unconventional steps, Appellant specifically contends the leveraging of historical financial transaction data such that only those employees of the vendor involved with the historical purchase transactions are displayed in the customer-specific data template of the online environment is not a conventional or routine step, but rather a feature that distinguishes the claimed invention from the prior art. Appeal Br. 13; Reply Br. 3. This argument does not apprise us of error inasmuch as it relies on the alleged novelty of the claimed invention. In considering whether the claims amount to significantly more, the Federal Circuit has held: “a claim for a new abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016).

With regard to Appellant’s contention that the claimed invention is performed on a particular machine, Appellant argues that the claimed invention satisfies the machine-or-transformation test set forth in *Bilski v. Kappos*, 561 U.S. 593 (2010). Appeal Br. 14–15. According to Appellant, the claims are tied to specific hardware or software components of a specially programmed vendor computing device interacting with other devices over a communications network, and the claims result in a transformation of data. *Id.*

At the outset, we disagree with Appellant that the transformation of data satisfies the transformation prong of the machine-or-transformation test. Our reviewing court has held that “[t]he mere manipulation or reorganization of data . . . does not satisfy the transformation prong” of the machine-or-transformation test. *Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011). Moreover, even if the claimed invention is tied to a machine, the recited machine, i.e., the claimed computing components, are insufficient to confer patent-eligibility. The Federal Circuit has explained that “satisfying the machine-or-transformation test, by itself, is not sufficient to render a claim patent-eligible, as not all transformations or machine implementations infuse an otherwise ineligible claim with an inventive concept.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (quotations and citations omitted). The Federal Circuit has also made clear that “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *Id.* (citing *Alice*, 134 S. Ct. at 2358). As discussed above, the recited computing components are generic and conventional.

Lastly, with regard to Appellant’s assertion that the claimed invention improves a computer, Appellant specifically contends that the claimed invention improves network communications by leveraging stored historical purchase transaction data to present a customer-specific data template including selectable options for communicating with only those employees of the vendor involved with the historical purchase transactions of the customer. Appeal Br. 13; Reply Br. 2. According to Appellant, the claims do not merely recite the performance of some business practice known from

the pre-Internet world along with the requirement to perform it on the Internet” or a computer, but rather are “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” Appeal Br. 14; Reply Br. 2 (both citing *DDR*, 773 F.3d at 1250).

Although the claimed invention may improve communications between a vendor and its customers, we fail to see how the invention improves computer network communications. Leveraging stored historical purchase transaction information and providing options for a customer to communicate with only those employees of the vendor involved with the historical purchase transactions of the customer would improve communications between a vendor and customers whether the vendor and customers were communicating over a computer network or not. Furthermore, the claims do not include any technical details describing how the vendor computer retrieves the historical transaction data or how the computer generates the customer-specific data template including the selectable options for communicating with only the employees involved with the customer’s historical purchase transactions. Accordingly, the claimed invention is not deeply rooted in computer networks or an improvement to computer networks. Rather, as the Examiner finds, the claims represent the generic computer implementation of an abstract business practice, which is insufficient to confer patent-eligibility. Ans. 3; *see also DDR*, 773 F.3d at 1256 (“[T]hese claims in substance were directed to nothing more than the performance of an abstract business practice on the Internet or using a conventional computer. Such claims are not patent-eligible.”).

In view of the foregoing, Appellant has not apprised us that the Examiner erred in determining the claims are directed to non-statutory subject matter. We, therefore, sustain the rejection of claims 1–20 under 35 U.S.C. § 101.

Obviousness

In regard to independent claim 1, Appellant argues the cited references do not render obvious the limitation reciting “displaying, on the communication device of the customer, the customer-specific data template including the selectable options for communicating with only those employees of the vendor involved with the historical purchase transactions of the customer.” Appeal Br. 19–20; Reply Br. 11. Appellant’s argument is persuasive.

The Examiner finds Wegner teaches historical transaction data including the employees of a vendor involved with the historical purchase transactions of a customer. Final Act. 4 (citing Wegner ¶ 45). Indeed, Wegner teaches that when consumers 600 use their loyalty program accounts to purchase goods or services, transactional information 630 is created, which includes the cashier of the goods or services purchased. Wegner ¶ 45. The Examiner also finds Dapoz teaches selectable options for communicating with an employee. Final Act. 5 (citing Dapoz ¶ 19). As set forth in Dapoz, a salesperson’s profile includes the salesperson’s address, as well as a direct link for the salesperson’s e-mail address or telephone number (Dapoz ¶ 19) such that Dapoz teaches selectable options for communicating with the salesperson.

Although we agree with the Examiner that Wegner teaches transaction information including the employees involved with a customer's historical purchase transactions and that Dapoz teaches providing selectable options for communicating with an employee, neither Wegner nor Dapoz teaches including employee contact information on a customer-specific template that is displayed to the customer. As Appellant points out, Wegner teaches that the transaction information is transmitted to the consumer purchase database 50 and is used to determine offer and reward eligibility.

Appeal Br. 20; Wegner ¶ 45. Dapoz teaches displaying the selectable options for contacting a salesperson on a salesperson's profile, not on a customer-specific data template. Reply Br. 11; Dapoz ¶ 19. Consequently, we fail to see how a person of ordinary skill in the art would have combined teachings of Wegner and Dapoz to result in "displaying, on the communication device of the customer, the customer-specific data template including the selectable options for communicating with only those employees of the vendor involved with the historical purchase transactions of the customer," as recited in independent claim 1.

In view of the foregoing, we do not sustain the Examiner's rejection of independent claim 1 and claims 2–8, 10, and 11 depending therefrom. Independent claims 12 and 16 also include the disputed limitation of independent claim 1, and the Examiner's rejection of these claims suffers from the same deficiency as the rejection of independent claim 1. Accordingly, we similarly do not sustain the rejection of independent claims 12 and 16 and dependent claims 13–15 and 17–20. Furthermore, claim 9 depends from independent claim 1, and the Examiner does not rely on Ivanovic in a way that would cure the deficiency of the rejection of

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independent claim 1. We, thus, do not sustain the rejection of claim 9 for the same reasons as independent claim 1.

DECISION

The Examiner's decision to reject claims 1–20 under 35 U.S.C. § 101 is affirmed.

The Examiner's decision to reject claims 1–20 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). 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED