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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYAN SMITH

Appeal 2016-001626
Application 13/163,585
Technology Center 3700

Before JAMES P. CALVE, BRANDON J. WARNER, and BRADLEY B. BAYAT, *Administrative Patent Judges*.

WARNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ryan Smith ("Appellant")[1] appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–17 and 19–21, which are all the pending claims, under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. *See* Appeal Br. 9–46; Final Act. 2–4. We have jurisdiction over the appeal under 35 U.S.C. § 6(b). An oral hearing was held on January 10, 2018.

We AFFIRM.

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[1] According to Appellant, the real party in interest is Spinning Plates, LLC. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Appellant's disclosed invention "relates in general to an electronic cookbook, and in particular to a method and system for planning upcoming meals and shopping for ingredients," by "record[ing] user preferences for given recipes or sets of recipes, and plan[ning] upcoming meals according to those preferences." Spec. ¶ 1. Claims 1, 14, and 17 are independent. Claim 1, reproduced below with emphasis added, is illustrative of the subject matter on appeal.

> 1. A method for meal planning carried out by a logic subsystem with physical, non-transitory devices configured to hold data and instructions executable by the logic subsystem, comprising:
>
> *receiving a digital representation of a user's meal preferences*, the user's meal preferences including a user-defined meal frequency setting configurable to include a first, more frequent setting, a second, less frequent setting, and a third, even less frequent setting, as specified by the user, the logic subsystem receiving the digital representation;
>
> automatically *generating*, via the logic subsystem, *a meal plan* including a plurality of separate meals based on the user's meal preferences, each meal including a recipe, wherein the user-defined meal frequency settings are specific to particular recipes indicating how often a particular recipe is to reoccur in the meal plan; and
>
> *displaying*, via a user interface of the logic subsystem, *information to the user* including the automatically generated meal plan,
>
> wherein the user-defined meal frequency setting specifies a relative frequency for distinct recipes to occur in the meal plan, the relative frequency including how often a selected recipe re-occurs, and where the user's meal preferences further include time of year settings that are specific to particular recipes, where the particular recipe is available to be selected in

> meal slots that occur only during a designated time of year, and where the automatic generation of the meal plan populates the plan more often with recipes having a user-selected higher frequency preference than recipes with a user-selected lower frequency preference and further based on a current time of a calendar year, where the user's selections are received through the user interface and where the physical, nontransitory devices include memory including a recipe database that includes a collection of recipes, including the user-defined meal frequency settings and the particular and distinct recipes.

PRINCIPLES OF LAW

A patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The Supreme Court has consistently held that this provision contains an important implicit exception: laws of nature, natural phenomena, and abstract ideas are not patentable. *See Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) ("Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.").

Notwithstanding that a law of nature or an abstract idea, by itself, is not patentable, an application of these concepts may be deserving of patent protection. *See Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293–94 (2012). In *Mayo*, the Court stated that "to transform an unpatentable law of nature into a patent-eligible *application* of such a law, one must do more than simply state the law of nature while adding the words 'apply it.'" *Mayo*, 132 S. Ct. at 1294 (citation omitted).

In *Alice*, the Court reaffirmed the framework set forth previously in *Mayo* "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 134 S. Ct. at 2355. The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* If the claims are directed to a patent-ineligible concept, then the second step in the analysis is to consider the elements of the claims "individually and 'as an ordered combination"' to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297).

In other words, the second step is to "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 on the [ineligible concept] itself.'" *Id.* (brackets in original) (quoting *Mayo*, 132 S. Ct. at 1294). The prohibition against patenting an abstract idea "cannot be circumvented by attempting to limit the use of the formula to a particular technological environment or adding insignificant postsolution activity." *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation and internal quotation marks omitted). The Court in *Alice* noted that "[s]imply appending conventional steps, specified at a high level of generality," was not "*enough*" [in *Mayo*] to supply an "'inventive concept.'" *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1300, 1297, 1294).

ANALYSIS

The claimed invention at issue here is directed to methods and systems for generating an individualized meal plan using a logic subsystem, based on certain data inputs and user-defined preferences, and then displaying that information via an interface, such as on a mobile application. *See* Appeal Br., Claims App. In other words, the claims are directed to receiving data (namely, a digital representation of a user's meal preferences, including details such as selectable frequency settings), manipulating the data (generation of the meal plan), and then outputting the result (display of information to the user including the meal plan), all implemented on a computer (logic subsystem). *See id.*

The Examiner determines that the claims are directed to patent-ineligible subject matter because, considering all elements both individual and in combination, the claims "do not amount to significantly more than an abstract idea." Final Act. 3. Further, the Examiner explains that the elements of the claims other than the abstract idea amount to no more than mere instructions to implement the idea on a computer. *See id.* at 3–4. In light of the principles above, and for the reasons discussed below, we agree with the Examiner's conclusion that the claims are directed to patent-ineligible subject matter.

Appellant argues that the structure of the claims—namely, generating a meal plan via a logic subsystem—ensures that the claims are directed to more than an abstract idea. *See* Appeal Br. 11–22. Appellant also argues that the use of the logic subsystem to implement the method recited includes "significantly more" than an abstract idea, sufficient to transform any abstract idea into eligible subject matter. *See id.* at 22–24. Finally,

Appellant takes issue with the form of the rejection as being insufficient. *See id.* at 24–46. We are not persuaded by Appellant's arguments.

In the first step of the *Alice* analysis, "the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided." *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016), *cert. denied*, 138 S. Ct. 469 (2017) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016). To this end, the Examiner calls attention to *DietGoal Innovations LLC v. Bravo Media LLC*, 599 F. App'x 956 (Fed. Cir. 2015) (affirming 33 F. Supp. 3d 271, 275 (S.D.N.Y. 2014)), where the Federal Circuit already considered claims similar or parallel to structure of this type—namely, "a computerized method and system for diet-related behavior analysis, training, and planning" (33 F. Supp. 3d at 273; *see id.* at 273–75)—and affirmed a determination of patent-ineligibility for similarly structured claims directed to computerized meal planning. Ans. 4–6.

Appellant does not apprise us of a meaningful distinction in the form or type of the claims between those presently recited and those previously adjudicated in *DietGoal*. Moreover, regarding recitation in the claims of specific data (e.g., a user's meal preferences, including details such as selectable frequency settings), the Federal Circuit has recognized that limiting information to particular content does not change its character as information, which remains within the realm of abstract ideas. *Elec. Power Grp.*, 830 F.3d at 1353 ("Information as such is an intangible."). Rather, Appellant appears to focus on the second step of the *Alice* analysis, urging a limited reading of *DietGoal* and asserting that the present claims are

different because of the particular data used in the generation of the meal plan. *See* Reply Br. 2–5.

As to the second step of the *Alice* analysis, however, *regardless of particularities of the data used*, the Federal Circuit has held claims patent-ineligible as directed to an abstract idea when they merely collect information, analyze it, and display certain results, as to the claims in the present case. *See, e.g., Elec. Power Grp.*, 830 F.3d at 1353–54 (holding that "collecting information, analyzing it, and displaying certain results of the collection and analysis" are "a familiar class of claims 'directed to' a patent-ineligible concept," and explaining that the claims were not patent eligible because "[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions"); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (holding that, without additional limitations, a process that employs algorithms to manipulate existing information to generate additional information is not patent eligible). Appellant's attempts to "'transform the nature of the claim' into a patent-eligible application" are unpersuasive and unsupported by evidence in the record. *Accord Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297).

Further, to the extent that Appellant suggests that the alleged novelty of some particularities of the data used to generate the meal plan (e.g., "a combination of time of year specific to particular recipes and frequency settings for how often distinct recipes occur in the plan") should indicate that the claims are transformed into patent-eligible subject matter, this suggestion is misplaced. Reply Br. 3; *see id.* at 3–6. A finding that claims are novel in

light of an absence of evidence does not conflict with the Examiner's conclusion of ineligibility under § 101 because "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) (citing *Mayo*, 132 S. Ct. at 1304). Whether the claimed concept is "[g]roundbreaking, innovative, or even brilliant . . . does not by itself satisfy the § 101 inquiry." *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2117 (2013). Consequently, under the second step of the *Alice* analysis, an abstract idea does not transform into an eligible inventive concept just because the Examiner has not found prior art that discloses or suggests it. Indeed, "[t]he 'novelty' of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter." *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981).

Given the binding precedent of our reviewing courts, we agree with the Examiner's ultimate conclusion that the present claims are directed to patent-ineligible subject matter, particularly in light of the explanation provided at pages 3–16 of the Examiner's Answer, where the Examiner applies the principles above.

In short, Appellant does not apprise us of a significant difference in the form, structure, or substantive content of the recitations, between the claims recited and those claims already determined to be patent-ineligible by our reviewing courts. Thus, for this reason and those explained above, we are obliged to affirm the Examiner's rejection.

DECISION

We AFFIRM the Examiner's decision rejecting claims 1–17 and 19–21 under 35 U.S.C. § 101 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED