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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN TEDJAMULIA, MANISH C. MEHTA,
RONALD VINCENT ROSE, and ANDREW TOBIAS SIEMER

Appeal 2016-001630
Application 13/184,039¹
Technology Center 3600

Before, JOSEPH A. FISCHETTI, BRADLEY B. BAYAT, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 3–7, 9–13, and 15–20. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Appellants identify Dell Products L.P as the real party in interest. Br. 1.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants' claims are directed to automating the administration of social commerce. (Claim 1).

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

1. A computer-implementable method for automating the administration of social commerce, comprising:

receiving input data from an affiliate, the input data comprising affiliate data associated with an affiliate of a provider of a set of available products;

processing the affiliate data to generate a social commerce site associated with the affiliate and the provider of the set of available products, the social commerce site comprising a social commerce storefront embedded within a social media site, the social media site comprising social commerce content associated with the set of available products;

receiving, via a computer system, input data from the affiliate, the input data comprising product selection data;

processing, via the computer system, the product selection data to populate the social commerce site with a set of purchasable products selected from the set of available products;

receiving, via the computer system, input data from a user associated with the affiliate, the input data comprising product purchase data corresponding to the purchase of a subset of the set of purchasable products;

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processing, via the computer system, the product purchase data to perform a product purchase transaction, the affiliate receiving a portion of the financial proceeds from the product purchase transaction;

receiving, via the computer system, input data from the affiliate, the input data comprising content data associated with individual purchasable products of the set of purchasable products; and

processing, via the computer system, the content data to generate linked content data linked to the individual purchasable products; and wherein

the content data provides an incentive for the user to visit the social commerce site, the incentive comprising remuneration for referring customers to the provider of the set of available products.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Bezos

6,029,141

Feb. 22, 2000

How Storefront Social Works, Internet Archive Way Back Machine (July 31, 2014),
[https://web.archive.org/web/2010062114452/http://storefrontsocial.com/howitworks#\[7/31/2014 4:45:33 PM\]](https://web.archive.org/web/2010062114452/http://storefrontsocial.com/howitworks#[7/31/2014 4:45:33 PM]).

Cafepress.com, Internet Archive Way Back Machine (February 27, 2014),
[https://web.archive.org/web/20050204013932/http://cafepress.com/cp/info/sell/\[2/27/2013 2:38:29 PM\]](https://web.archive.org/web/20050204013932/http://cafepress.com/cp/info/sell/[2/27/2013 2:38:29 PM]).

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The following rejections are before us for review.

Claims 1 and 3–7, 9–13 and 15–20 are rejected under 35 U.S.C. § 101.

Claims 1, 3, 4, 7², 9, 10, 13, and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bezos, Storefront, and CafePress.

Claims 5, 6, 11, 12, 17, and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bezos, Storefront, CafePress, and Official Notice.³

FINDINGS OF FACT

1. We adopt the Examiner’s findings as set forth on pages 4–10 of the Answer.

ANALYSIS

35 U.S.C. § 101 REJECTION

Claims 1, 3–7, 9–13, and 15–20 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

We will sustain the rejection for reasons which follow.

The Supreme Court

² Although the Final Rejection does not group independent claim 7 in the listing of claims on page 5, it nevertheless does make extensive findings specifically to claim 7 as found at pages 8–10.

³ Although the general listing of the references on page 13 of the Final Rejection omits *Storefront*, we consider this to be an inadvertent error given that it is referenced in the rejections of each of the addressed claims.

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] 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.”

Alice Corp., Pty. Ltd. v. CLS Bank Int’l, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept.

Although the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case’s claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The steps in claim 1 result in providing an incentive for the user to visit a social commerce site, the incentive comprising remuneration for referring customers to the site provider of the set of available products. The Specification at paragraph 3 recites:

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Typically, potential customers are referred to the merchant's website from an affiliate's web site, which receives a share of any resulting sale as compensation for the referral. Various affiliate network services and benefits generally include referral tracking, reporting tools, payment processing, and access to a large base of participants.

Thus, all this evidence shows that claim 1 is directed to an incentive comprising remuneration for referring customers to a provider of a set of available products. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972) in particular, that the claims at issue here are directed to an abstract idea. Ensuring remuneration to a party for referring customers to a merchant business is a fundamental economic practice because it is in essence, a commission, which is an age old economic practice. The patent-ineligible end of the 35 U.S.C. § 101 spectrum includes fundamental economic practices. *See Alice*, 134 S. Ct. at 2355–1257. Thus, providing payment by a merchant to a party referring customers to that merchant is an “abstract idea” beyond the scope of § 101.

As in *Alice*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of an intermediated settlement in *Alice* and the concept of paying remuneration by a merchant to a party who has referred customers to that merchant, at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. That the claims do not preempt all forms of the abstraction, or may be limited to social media settings, does not make them

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any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015). Perhaps more to the point, claim 1 does no more than repay a party for sending business to a given merchant. Repayment, as such, is a disembodied concept that is the epitome of abstraction.

The introduction of a computer into the claims does not alter the analysis at step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on ... a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 134 S. Ct. at 2358 (alterations in original) (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a

computer to take in data, compute a result, and return the result to a user amounts to electronic data query and retrieval—some of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants’ claims add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellants’ claims simply recite the concept of paying a remuneration by a merchant to a third party who has referred customers to that merchant. The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than paying a remuneration by a merchant to a third party who has referred customers to that merchant. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

As to the structural claims, they are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in

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ways that make patent eligibility ‘depend simply on the draftsman’s art.’

Alice Corp. Pty. Ltd., 134 S. Ct. at 2360 (alterations in original).

We thus disagree with Appellants that the claims before us are similar to those of *DDR Holdings* (Appeal Br. 6) because claim 1 does not recite any specific means constituting an improvement in the technical field or technology of telecommunications carriers.⁴ See *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

35 U.S.C. § 103 REJECTION

We will affirm the rejection of claims 1, 3–7, 9–13, 17, 18, and 20 under 35 U.S.C. § 103.

The Appellants argued claims 1, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, and 18-20 as a group. (Appeal Br. 7). We select claim 1 as the representative claim for this group, and the remaining claims stand or fall with claim 1. See 37 C.F.R. § 41.37(c)(1)(iv) (2015).

Appellants argue,

This element has been clearly defined within the claims by setting forth that the social commerce site comprises a social commerce

⁴ In *DDR*, the claims at issue there involved, *inter alia*, “web pages displays [with] at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants” (claim 1 of US 7,818,399). There is no such level of computer function specificity in the claims before us, such as, a web page with an active link and associated objects.

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storefront embedded within a social media site and that the social media site comprises social commerce content associated with the set of available products. It is respectfully submitted that nowhere within CafePress is there any disclosure or suggestion of processing affiliate data to generate a social commerce site, much less where the social commerce site is associated with the affiliate and the provider of the set of available products, as required by claims 1, 7, and 13. This deficiency of CafePress is not cured by Bezos or Storefront Social, taken alone or in combination.

(Appeal Br. 7)

That argument is not well taken because the Appellants are attacking the references individually when the rejection is based on a combination of references and the Examiner found that:

CafePress was cited as teaching “processing the affiliate data to generate a social commerce site associated with the affiliate and the provider of the set of available products ([CafePress] pgs. 1 and 3).” (See Final Office Action, pg. 6). StorefrontSocial was cited in the Final Office Action, as teaching the other above limitations, as it teaches “a social commerce site comprising a social commerce storefront embedded within a social media site, the social media site comprising social commerce content associated with the set of available products ([StorefrontSocial] pgs 1, 3, and 6).” (see Final Office Action, pg. 6).

(Answer 6) (brackets in original). *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58 (CCPA 1968).

Concerning claims 5, 11 and 17 Appellants argue,

However, it is respectfully submitted that while linking a social commerce site from a social media environment may be well known, it is not well known to associate an affiliate with a social media environment where the social media environment comprises a social commerce storefront embedded within a social media site and that the social media site comprises social commerce content associated with the set of available products, much less where the user is referred to the social commerce site from within the social media environment, as required by claims 5, 11, and 17.

(Appeal Br. 8).

The Examiner finds,

[h]owever, most of that language [argued by Appellants above] is not in claims 5, 11, and 17, and Official Notice was not used to teach this. Official Notice was only used to show that “it is old and well known in the art to link to a social commerce site from a social media environment” which is what claims 5, 11, and 17 add. The rest of the limitations Appellant is now arguing are already cited as being taught by Bezos, CafePress, and StorefrontSocial in the independent claim (which is where Appellant got that additional language). Further, each affiliate store that is setup on CafePress is affiliated with other affiliate CafePress stores on the CafePress network, and the affiliates may link one another's stores so CafePress users may find them. Mutually linking to a friend's store is quite common. Additionally, StorefrontSocial art has been added to the rejection

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which clearly shows a storefront for a social commerce site being embedded in a social media webpage.

(Answer 8–9).

We agree with the Examiner for the reasons set forth above, which are self-explanatory to the overbreadth of Appellants’ arguments against the Official Notice issue. An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728 (CCPA 1971). That has not been done here.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1, 3–7, 9–13, and 15–20 under 35 U.S.C. § 101.

We conclude the Examiner did not err in rejecting claims 1, 3–7, 9–13, 15-20 under 35 U.S.C. § 103.

DECISION

The decision of the Examiner to reject claims 1, 3–7, 9–13, and 15–20 is affirmed.

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.