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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID J. POPOWICH

Appeal 2016-002219
Application 11/830,911¹
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–5, 7, 8, 16–22, 25, and 28–33. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ The Appellant identifies SAP SE as the real party in interest. Appeal Br. 1.

ILLUSTRATIVE CLAIM

1. A non-transitory computer-readable storage medium storing code representing instructions that when executed are configured to cause a processor to perform a customer relationship management process comprising:

receiving a plurality of customer inquiries related to one or more pre-sales documents associated with a product;

associating a sales opportunity with the plurality of customer inquiries based on the one or more pre-sales documents;

tracking one or more sales activities performed with respect to the sales opportunity and in response to the plurality of customer inquiries;

determining a status for each of the plurality of customer inquiries based on the one or more sales activities, the status being one of a resolved status, an unresolved status, and an unsatisfactory status;

generating an activity report including a status field associated with the sales opportunity, the status field divided into at least two priority subdivisions, each priority subdivision divided into a plurality of status indicators, each of the plurality of customer inquiries being sorted into the at least two priority subdivisions based on a priority associated with the customer inquiry, each status indicator representing a count of the status determined for each of the plurality of customer inquiries and including a link to information for each customer inquiry of the respective status;

providing the activity report to a computing device for display in a user interface on the computing device;

receiving an indication of a selection of the link to information for each customer inquiry of a respective status;
and

in response to receiving the indication of the selection of the link, providing information associated with each customer inquiry sorted into the priority subdivision for the status field

and that is of the respective status, the information for display in the user interface of the computing device.

REJECTIONS

I. Claims 1–5, 7, 8, 16–22, 25, and 28–33 are rejected under 35 U.S.C. § 101 as ineligible subject matter.²

II. Claims 1–5, 16–18, 20, 22, 25, 28, 29, and 31–33 are rejected under 35 U.S.C. § 103(a) as unpatentable over Grover et al. (US 2006/0074919 A1, pub. Apr. 6, 2006, hereinafter “Grover”), Thier (US 2006/0155596 A1, pub. July 13, 2006), and Schlick et al. (US 7,096,188 B1, iss. Aug. 22, 2006, hereinafter “Schlick”).

III. Claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Grover, Thier, Schlick, and Inagaki (US 2008/0168074 A1, pub. July 10, 2008).

IV. Claims 7, 19, 21, and 30 are rejected under 35 U.S.C. § 103(a) as unpatentable over Grover, Thier, Schlick, and Parker et al. (US 2002/0052774 A1, pub. May 2, 2002, hereinafter “Parker”).

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

² We regard as inadvertent the inclusion of canceled claims 15, 26, and 27 in Rejection I (*e.g.*, Final Action 7–8). *See* Appeal Br. 37, 39.

ANALYSIS

Subject-Matter Eligibility

Applying the first step of the methodology delineated in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014), the rejection states that the claims at issue are directed to the abstract idea of managing customer relationships, which is characterized as a fundamental economic practice (Final Action 7), an ineligible method of organizing human activity, and “mathematical relationships” (Answer 10). Under the second *Alice* step, the Examiner determines that the claimed features do not involve significantly more than the abstract idea, because the claimed elements merely link the use of the abstract idea to a particular technical environment, by reciting generic computer equipment performing generic, well-understood computer functions. Final Action 7–8.

Alleging error in the rejection of claim 1, and as to the first step of the *Alice* analysis, the Appellant contends that the rejection fails to set forth a prima facie case that the claims are directed to an abstract idea, because “[t]here is no evidence on the record to establish that the claims are an abstract idea of a fundamental economic practice, that of ‘managing customer relationship[s].’” Appeal Br. 21. *See also* Appeal Br. 31, Reply Br. 12–13. This argument does not persuade us of error in the rejection.

As an initial matter, the Federal Circuit has explained that “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)). The USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the

applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011). Thus, all that is required of the Office is that it set forth the statutory basis of the rejection, and the reference or references relied on, in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (Section 132 “is violated when the rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”) Here, the Examiner analyzed the claims using the *Alice* two-step framework, as discussed above. Accordingly, the Examiner notified the Appellant of the reasons for the rejection “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. In doing so, the Examiner set forth a prima facie case of unpatentability. Notably, the Appellant does not contend that the rejection was not understandable or that it failed to provide notice of the basis for the rejection. Instead, the Appellant’s understanding of the rejection is clearly evidenced by the substantive response in the Appeal Brief.

With regard to the role of evidence in the first *Alice* step, the Examiner points out that there is no requirement to provide “documentary evidence to demonstrate abstractness.” Answer 9. *See also* Answer 13. More particularly, though, as the Examiner explains, the determination of abstractness aligns with the approach of looking to court decisions regarding fundamental economic practices and methods of organizing human activity. *See Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294

(Fed. Cir. 2016) (a “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.”)

Fundamental economic practices and methods of organizing human activity — such as the identified abstract idea in this case — are a categories of basic tools of technological work, which courts regard as abstract ideas ineligible for patenting. *See Alice*, 134 S. Ct. at 2356–57; *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1353–55 (Fed. Cir. 2014). Additionally, the Appellant asserts that evidence is needed, but without providing any supporting reasoning, or any evidence, that might contradict the Examiner’s determination.

The Appellant also alleges error, on account of the alternative characterization of the identified abstract idea as a method of organizing human activities. Appeal Br. 28–30; Reply Br. 20–21. The Appellant submits that “the Office has entire classes of patents directed towards methods of organizing human activities, for example, methods of fishing (Class 43/4.5), and methods of bee keeping (Class 449/1)” and asks: “Should these classes of patents become no longer patent eligible?” Appeal Br. 30. According to the Appellant, “not only does the claim recite more than a method of organizing human activities, the inclusion of ‘certain methods of organizing human activities’ should not be an identified abstract idea.” *Id.* Yet, the expression has been applied in a more limited way, in subject-matter-eligibility jurisprudence. Courts use “the phrase ‘methods of organizing human activity’ to describe concepts relating to interpersonal and intrapersonal activities, such as managing relationships or transactions between people, social activities, and human behavior; satisfying or avoiding

a legal obligation; advertising, marketing, and sales activities or behaviors; and managing human mental activity.” MPEP § 2106.04(a)(2)(II) (9th ed., Rev. 8, Jan. 2018) (collecting cases).³ In regard to the Appellant’s concern about the potential overbreadth of this category of abstract ideas, the MPEP notes that only “certain methods of organizing human activity” would be ineligible; “[t]he term ‘certain’ qualifies this category description as a reminder that (1) not all methods of organizing human activity are abstract ideas, and (2) this category description does not cover human operation of machines.” *Id.*

Further, the Appellant contends that the abstract-idea identification of the rejection is erroneous, because the claims require a particular set of detailed operations that distinguish them from the general concept of managing customer relationships. *See* Appeal Br. 22–26, Reply Br. 13–18. The Appellant asserts that “[t]hese claims are clearly not just for managing a customer relationship,” but nevertheless concedes that the claimed subject matter “can be part of managing a customer relationship.” Appeal Br. 25. As the Federal Circuit has explained, “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). Rather than negating the propriety of the identified abstract idea, the Appellant’s argument instead proposes that there are particular, important claim features that do not simply implement the abstract idea. Such an exercise is the aim of the second step of the *Alice*,

³ Although the MPEP “does not have the force of law or the force of the rules in Title 37 of the Code of Federal Regulations” (MPEP, Foreword (9th ed., Rev. 8, Jan. 2018)), this Decision refers to the MPEP, here, for its helpful collection of cases that are authoritative.

analysis. Accordingly, we are not persuaded that the Appellant’s argument establishes that the claims are not directed to the identified abstract idea.

The Appellant also contends that claims were rejected erroneously, because the claims do not “pre-empt the broad field of managing issues with respect to customer management,” such that the claims cannot be directed to an ineligible abstract idea. Appeal Br. 27; *see also* Reply Br. 18–20.

However, as the Examiner points out (*see* Answer 12), the absence of complete preemption does not establish subject-matter eligibility. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”)

Turning to the second step of the *Alice* analysis, the Appellant argues that claim 1 recites “improvements to the technical field of database management for customer relationship management” (Appeal Br. 31) or “meaningful limitation[s] beyond generally linking the use of an abstract idea to a particular technological environment” (*id.* at 32). Specifically, the Appellant, citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), correctly argues that “the types of features recited in the claimed invention are directed to how computer interactions are manipulated to yield a desired result — a result that allows a sales representative to more quickly determine whether and how to respond to customer inquiries.” Appeal Br. 26. We agree. Claim 1 results in a link-based interaction and structured result stating:

receiving an indication of a selection of the link to
information for each customer inquiry of a respective status;
and

in response to receiving the indication of the selection of the link, providing information associated with each customer inquiry sorted into the priority subdivision for the status field and that is of the respective status, the information for display in the user interface of the computing device.

The Appellant correctly argues:

The improvements to the technical field of database management for customer relationship management recited by the claims result in a customer relationship management system that can “manage (e.g., prioritize, categorize and track) the customer inquiries for the sales representative 104, so that the sales representative 104 may more quickly determine whether and how to respond to each of the customer inquiries.”

Appeal Br. 31 (quoting Spec. ¶ 4). We agree with Appellant that like the claims in *DDR Holdings*, the claimed solution of the present case “do[es] 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’, but rather ‘is rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.’” Appeal Br. 25.

In addition, the Appellant argues that claim 1 amounts to significantly more than the identified abstract idea, based upon its combination of “generating an activity report” with “each status indicator . . . providing a link to information for each customer inquiry of the respective status” and “in response to receiving the indication of the selection of the link, sending information associated with each customer inquiry sorted into the priority subdivision for the status field and that is of the respective status, the information for display in the user interface of the computing device” *Id.* at 32. According to the Appellant:

The feature of including the link in the activity report can provide a sales representative with “more detailed [sic] about

one or more of the customer inquiries associated with the box” (the box being the claimed status indicator) because “clicking on the box for the priority 1 fields for Comp03 that are open (e.g., the box with the number 5) may provide more detailed [sic] about one or more of the customer inquiries associated with the box.”

Id. (quoting Spec. ¶ 65).

But, according to the rejection, the identified claim elements do not amount to more than the abstract idea, because these elements “are merely receiving, processing and transmitting data, which have been recognized by the courts as merely well-understood, routine, and conventional functions of generic computers.” Answer 14. *See also* Final Action 7–8 (“Although the claims do recite the use of a server, nothing more than a generic computer, performing generic, well-understood and routing computer functions, would be required to implement the aforementioned abstract idea.”)

Essentially, the rejection regards particular elements of claim 1 individually, but “[t]he inventive concept inquiry requires more than recognizing that each claim element, by itself, was known in the art.” *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016). Indeed, an “inventive concept” that satisfies the second *Alice* step “can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Id.* In view of the Appellant’s explanation of the effect of coordinated claim elements, the rejection does not sufficiently establish that the combined activity of various claim elements, as identified by the Appellant, fails to constitute significantly more than the abstract idea itself.

Accordingly, we do not sustain the rejection of independent claim 1 — and, for similar reasons, independent claims 17 and 33, as well as

dependent claims 2–5, 7, 8, 16, 18–22, 25, and 28–32 — under 35 U.S.C. § 101.

Obviousness

The Appellant argues that independent claim 1 was rejected erroneously, because the identified prior art references do not teach or suggest the recitation of “each status indicator representing a count of the status determined for each of the plurality of customer inquiries.” *See* Appeal Br. 18–19; Reply Br. 10–12.

According to the rejection, Schlick teaches this feature in regard to its disclosed tables with rows and columns — such as in Schlick’s Figures 9, 10, and 37 — wherein the defined cells (and subdivisions thereof) can display various items of status information. *See* Final Action 12 (citing Schlick, col. 9, l. 3–28, col. 20, ll. 23–67); Answer 8–9 (citing Schlick, col. 8, l. 66–col. 9, l. 45, col. 20, ll. 10–67, Figs. 9, 10, 37).

Although the Examiner’s Answer acknowledges that “the status priority in Fig. 9 and Fig. 37 [of Schlick] are not represented by a number value,” the Answer goes on to state that “the number of priority indicators in the cells can also representing [sic] a count of status.” Answer 9.

The Appellant contends that, because of this absence of a numerical count, Schlick fails to meet the limitation at issue — explaining that even if “a CONCERN cell of [Figure 37 of] Schlick is considered the claimed ‘status indicator’, Schlick is silent regarding ‘each status indicator **representing a count** of the status determined for each of the plurality of customer inquiries.” Reply Br. (Appellant’s emphasis).

The role of the claimed “count of the status determined for each of the . . . customer inquiries” is addressed in the Appellant’s Specification, which states, e.g., that the activity report of Figure 4 shows “[e]ach priority subdivision 232B . . . subdivided into one or more status fields 236A, 236B and 236C,” in which “[t]he status fields 236A, 236B and 236C may correspond to how many customer inquiries associated with a sales opportunity 206 are unsatisfactory (e.g., not okay), open (e.g., unresolved) and okay, respectively.” Spec. ¶ 61. By making the “count” manifest — as in claim 1, per the Appellant’s interpretation — “[t]he activity report of FIG. 4 may be useful, for example, for a sales manager to quickly review the status of one or more sales representatives for whom the manager may be responsible.” Spec. ¶ 66.

Notwithstanding the statement in the Examiner’s Answer that “the number of priority indicators in [Schlick’s] cells can also representing [sic] a count of status” (Answer 9) in some manner, this priority information is “not represented by a number value” in Schlick (*id.*). Nor does the rejection explain how Schlick might be modified to provide claim 1’s numerical “count.”

In addition, neither of the two other references (Grover and Thier), relied upon in the rejection of claim 1, is shown to overcome the defect in Schlick.

Therefore, the Appellant persuades us that the cited prior art does not teach or suggest claim 1’s requirement of “each status indicator representing a count of the status determined for each of the plurality of customer inquiries.”

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Accordingly, we do not sustain the rejection of independent claim 1 — and, likewise, independent claims 17 and 33, as well as dependent claims 2–5, 7, 8, 16, 18–22, 25, and 28–32 — under 35 U.S.C. § 103(a).

DECISION

We REVERSE the Examiner’s decision rejecting claims 1–5, 7, 8, 16–22, 25, and 28–33 under 35 U.S.C. § 101.

We REVERSE the Examiner’s decision rejecting claims 1–5, 7, 8, 16–22, 25, and 28–33 under 35 U.S.C. § 103(a).

REVERSED