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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARTIN SCHMIDT and MARIO DIWERSY

Appeal 2016-002602
Application 12/491,825¹
Technology Center 3600

Before MICHAEL J. STRAUSS, JOSEPH P. LENTIVECH, and
AARON W. MOORE, *Administrative Patent Judges*.

LENTIVECH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1, 2, 4, 6–14, 16, 17, and 20–23. Claims 3, 5, 15, 18, and 19 have been canceled. *See* App. Br. 37–41 (Claims App' x). We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Elsevier, Inc. App. Br. 2.

STATEMENT OF THE CASE

Appellants' Invention

Appellants' invention generally relates to methods and systems for social networking. Spec. ¶ 2. Claims 1 and 10, which are illustrative, read as follows:

1. A method for disambiguation, comprising:

receiving, from a computer interface, an identifier shared by a plurality of entities;

determining, by a program controlled data processor, a plurality of publications associated with the identifier, wherein each of the plurality of publications comprises a plurality of attributes;

constructing, by said program controlled data processor, a plurality of clusters of publications, wherein each cluster is based on at least one of the plurality of attributes of each publication, and said construction comprises:

comparing a first of the plurality of publications to the remaining plurality of publications;

determining if a similarity is above a predetermined threshold; and

clustering the publications having a similarity above the determined threshold;

associating, in computer memory, each of the plurality of clusters with a different one of the plurality of entities; and

outputting one of the plurality of clusters and the identifier.

10. A method for social networking, comprising:

determining, based on computer readable data, a plurality of clusters of items, wherein each cluster is associated with a unique entity;

determining, by a program controlled data processor, one or more connections between the pluralities of clusters, wherein said one or more connections relate to co-authorship;

storing, in a non-transitory computer readable storage medium, said one or more connections between clusters;

constructing, in computer memory, a profile for a first unique entity, wherein the profile comprises a first of the plurality of clusters associated with the first unique entity and the one or more connections between the first of the plurality of clusters and the remaining clusters of the plurality of clusters; and

outputting the profile.

Rejections

Claims 1, 2, 4, 6–14, 16, 17, and 20–23 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–3.

Claims 1, 2, 4, and 6–9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zeng et al. (US 7,685,201 B2; issued Mar. 23, 2010) (“Zeng”), Blume et al. (US 7,672,833 B2; issued Mar. 2, 2010) (“Blume”), and Bunescu et al. (US 2007/0233656 A1; published Oct. 4, 2007) (“Bunescu”). Final Act. 4–8.

Claims 10–14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zeng and Ellis (US 2008/0065621 A1; published Mar. 13, 2008). Final Act. 8–10.

Claims 16, 17, and 20–23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Stackpole (US 2008/0140650 A1; published June 12, 2008), Zeng, Ellis, and Marin et al. (US 2003/0033208 A1; published Feb. 13, 2003). Final Act. 11–15.

ANALYSIS

§ 101 Rejection

Issue: Did the Examiner err in finding that claims 1, 2, 4, 6–14, 16, 17, and 20–23 are directed to nonstatutory subject matter under 35 U.S.C. § 101?

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S.Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S.Ct. 2107, 2116 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S.Ct. 1289, 1300 (2012), “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 that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* (citing *Mayo*, 132 S.Ct. at 1296–97). If so, the second step is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1297–98). 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 upon the [ineligible

concept] itself.” *Id.* (alteration in original) (quoting *Mayo*, 132 S.Ct. at 1294). The Court acknowledged in *Mayo* that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 132 S.Ct. at 1293. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea, and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Turning to the first step, the Examiner finds claims 1, 2, 4, 6–14, 16, 17, and 20–23 are directed to “the concept of disambiguation for entities associated with publications to form clusters based on similarity.” Final Act. 2. The Examiner finds, based on the Specification, the claimed disambiguation process is a fundamental business documentation practice and a method for organizing human activities. *Id.* The Examiner also finds the recited limitations can be performed mentally or are well-known, routine, and conventional practices that require no more than a generic computer to perform generic computer functions. *Id.* Based on these findings, the Examiner concludes the claims are directed to an abstract idea. *Id.*

Appellants contend the claims are not directed to an abstract idea because

the claims are not directed to a fundamental economic practice, a method of organizing human activities, an idea of itself or a mathematical relationship/formula. Furthermore, the claims are not similar to any of the examples of patent-ineligible subject matter that were set forth in the *2014 Interim Guidance on Patent Subject Matter Eligibility* or in the *Examples: Abstract Ideas* published by the USPTO on January 27, 2015 of the *July 2015*

Update Appendix 1: Examples published by the USPTO in July 2015. Instead, the claims of the present application are necessarily rooted in computer technology and recite very particular manners for disambiguation and social networking.

App. Br. 15. Appellants argue the claims are similar to the claims addressed in *DDR Holdings, LLC v. Hotels.com L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), because they similarly address a computer-centric challenge with a claimed solution that is necessarily rooted in computer technology. App. Br. 15–20.

We are not persuaded by Appellants’ arguments. “Distinguishing between claims that recite a patent-eligible invention and claims that add too little to a patent-ineligible abstract concept can be difficult, as the line separating the two is not always clear.” *DDR*, 773 F.3d at 1255. Often, “there is considerable overlap between step one and step two.” *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016). “[T]he decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen.” *Id.*

We disagree with Appellants that the claims are similar to those of *DDR*, because they are not “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks” (*DDR*, 773 F.3d at 1257). Instead, we find the claims are similar to those of *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). Here, as in *Electric Power*, the claims do not go beyond requiring the collection and analysis of data, and outputting certain results of the collection and analysis, without limiting the recited steps to technical means for performing the functions that are arguably an advance over conventional computer and network technology. *See Elec. Power*, 830 F.3d at 1354. When “the focus of the asserted claims” is “on collecting information,

analyzing it, and displaying certain results of the collection and analysis,” the claims are directed to an abstract idea. *Elec. Power*, 830 F.3d at 1353.

In the second step, we “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.” *Alice*, 134 S.Ct. at 2355. 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).

The Examiner further finds the claims do not recite limitations that are “significantly more” than the abstract idea because the claims do not recite an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment. Final Act. 2–3.

Appellants contend that even if the claims were directed to an abstract idea, the claims recite patentable subject matter because “[e]ach of independent claims 1, 10, and 16 at least add specific limitations to what is well-understood, routine and conventional in the field, and add unconventional steps that confine the claims to a particular useful application.” App. Br. 21.

We find unpersuasive Appellants’ argument that the claims are significantly more than the abstract idea because the claims recite

[S]pecific and concrete steps [that] add limitations to the claims beyond what is well-understood, routine and conventional in the field, and confine the claims to a particular useful application of

identifying publications (e.g., technical or journal articles) stored in a computer database that are associated with an identifier (e.g., an author name) and clustering the identified publications into a plurality of clusters of publications, each of which is associated with a unique entity (e.g., a unique person sharing the author name) that shares the identifier (e.g., the author name).

App. Br. 22–23. The steps of receiving an identifier shared by a plurality of entities; determining a plurality of publications associated with the identifier; constructing a plurality of clusters of publications by comparing a first of the plurality of publications to the remaining publications, determining if a similarity is above a threshold, and clustering publications having a similarity above the threshold; and associating each cluster with a different one of the plurality of entities (as, for example, recited in claim 1) are all steps that can be performed using well-understood, routine, and conventional functions of a general purpose computer. And Appellants do not provide adequate evidence to the contrary. *See Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347–49 (Fed. Cir. 2014) (“The concept of data collection, recognition, and storage is undisputedly well-known.”). The Specification supports this view in discussing general purpose computer(s) for performing the steps of the method. *See* Spec. ¶¶ 15–27. In particular, the Specification provides “one skilled in the art will appreciate that the system and method disclosed herein can be implemented via a general-purpose computing device in the form of a computer [].” Spec. 18. There is no further description, in the claims or the Specification, of any particular technology for performing the limitations recited in the claims other than generic computer components used in their ordinary capacity. *See Enfish*, 822 F.3d. at 1336 (focusing on whether the claim is directed to “an improvement to [the] computer functionality itself,

not on economic or other tasks for which a computer is used in its ordinary capacity”); *DDR*, 773 F.3d at 1256 (“[A]fter Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”) (citing *Alice*, 134 S.Ct. at 2358)).

For the foregoing reasons, we are not persuaded that the Examiner erred in rejecting claims 1, 2, 4, 6–14, 16, 17, and 20–23 under 35 U.S.C. § 101.

§ 103 Rejection of Claims 1, 2, 4, and 6–9

CLAIM 1

Issue: Did the Examiner err in finding that the combination of Zeng, Blume, and Bunescu teaches or suggests “comparing a first of the plurality of publications to the remaining plurality of publications; determining if a similarity is above a predetermined threshold; and clustering the publications having a similarity above the determined threshold,” as recited in claim 1?

Appellants contend the cited references fail to teach or suggest the disputed limitation because Zeng “does not teach or fairly suggest comparing a first of the plurality of publications to the remaining plurality of publications, as recited in independent claim 1.” App. Br. 26. Appellants argue the Examiner “fails to properly address the language of claim 1” because the Examiner asserts Zeng teaches or suggests “comparing [the] first of the plurality of *items* to the remaining plurality of *items*” and not “comparing [the] first of the plurality of *publications* to the remaining plurality of *publications*,” as recited in claim 1. App. Br. 26 (citing Final Act. 6). Appellants further argue “Zeng merely discloses retrieving search results and clustering person-related documents for person disambiguation”

and “[t]he cited portion [of Zeng] is wholly silent with respect to *comparing* publications in any capacity.” App. Br. 26 (citing Zeng 6:9–31).

We do not find Appellants’ contention persuasive. The Examiner finds, and we agree, Zeng is directed to “disambiguating data corresponding to persons that are located from search results, so that different persons having the same name can be clearly distinguished.” Ans. 5–6 (citing Zeng, Abstract). The Examiner further finds, and we agree, Zeng teaches representing each person as a vector, calculating a similarity among vectors, and based on the calculated similarity, clustering person vectors that represent the same person so that each cluster represents (to a high probability) only one distinct person. Ans. 6 (citing Zeng, Abstract). Clustering person vectors that represent the same person based on calculated similarity data, as taught by Zeng (Zeng, Abstract), teaches, or at least suggests, comparing a first person vector to each of the remaining person vectors to determine with which of the remaining person vectors the first person vector should be clustered. The Examiner finds, and we agree, Bunescu teaches clustering publications associated with an entity. Final Act. 5 (citing Bunescu ¶¶ 64, 73); Ans. 6. As such, we are not persuaded the Examiner erred by finding the combination of Zeng and Bunescu teaches or suggests the disputed limitation. We are also not persuaded by Appellants’ contention that the Examiner fails to properly address the disputed limitation because Appellants’ contention fails to address the Examiner’s reliance on the combined teachings of Zeng and Bunescu. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Appellants further contend the cited references fail to teach or suggest the disputed limitations because Blume does not teach or suggest “clustering

the publications having a similarity above a predetermined threshold.” App. Br. 27. Appellants argue the Examiner “fails to properly address the language of claim 1 because the Examiner asserts Blume allegedly discloses ‘determining similarities and clustering the entities having a similarity above the predetermined threshold,’ not clustering the publications having a similarity above a predetermined threshold.” App. Br. 27 (citing Final Act. 5). Appellants further argue the cited portions of Blume “merely teach merging *entity names* when a calculated sum of distance measure for the entity names exceeds a predetermined threshold” and “Blume is silent with respect to *clustering publications*.” App. Br. 27 (citing Blume, Fig. 3; 5:1–12, 6:12–25).

We do not find Appellants’ contentions persuasive. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck*, 800 F.2d at 1097. Here, the Examiner relies on the combined teachings of Zeng, Blume, and Bunescu for teaching or suggesting “determining if a similarity is above a predetermined threshold; and clustering the publications having a similarity above the determined threshold,” as recited in claim 1. Final Act. 5–6. Appellants’ contention fails to address the combined teachings of the references and, therefore, is unpersuasive of error.

For the foregoing reasons, we are not persuaded the Examiner erred in rejecting claim 1, or claims 2, 4, 7, and 8, which depend from claim 1 and are not separately argued with particularity, under 35 U.S.C. § 103(a).

CLAIM 6

Issue: Did the Examiner err in finding that the combination of Zeng, Blume, and Bunescu teaches or suggests “comparing a first of the plurality of clusters to the remaining plurality of clusters; determining if a similarity is above a predetermined threshold; and clustering the clusters having a similarity above the predetermined threshold,” as recited in claim 6?

Appellants contend the cited references fail to teach or suggest the disputed limitations of claim 6. App. Br. 27–29. In particular, Appellants contend “the cited portion of Zeng merely teaches retrieving search results and generically clustering person-related documents for person disambiguation” and “is wholly silent with respect to *comparing clusters* in any capacity.” App. Br. 28 (citing Zeng 6:9–31). Appellants further contend “[t]he cited portions of Blume (Figure 3, column 6, lines 13-25, column 5, lines 1-12, and column 6, lines 20-25) merely teach merging entity names when a calculated sum of distance measure for the entities exceeds a predetermined threshold” and “Blume is silent with respect to clusters in any capacity.” App. Br. 29.

We do not find Appellants’ contentions persuasive. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck*, 800 F.2d at 1097. Here, the Examiner finds Zeng teaches merging clusters representing the same entity. Ans. 7 (citing Zeng, Fig. 2; 4:49–60, 6:9–31); *see also* Zeng 5:1–9. The Examiner finds Zeng, therefore, teaches or suggests “comparing a first of the plurality of clusters to the remaining plurality of clusters;” “determining if a similarity [exists between the clusters];” and “clustering the clusters having a similarity.” Ans. 7; Final

Act. 6. The Examiner finds Blume teaches determining similarities and clustering entities having a similarity above a predetermined threshold.

Ans. 8 (citing Blume, Fig. 3; 5:1–12, 6:13–25); Final Act. 7. Based on these findings, the Examiner concludes the combined teachings of Zeng and Blume teach or suggest the disputed limitations. Final Act. 7. Appellants' contention fails to address the combined teachings of the references and, therefore, is unpersuasive of error.

CLAIM 9

Issue: Did the Examiner err in finding that the combination of Zeng, Blume, and Bunescu teaches or suggests “wherein the at least one of the plurality of attributes is co-author and the co-author has been previously disambiguated,” as recited in claim 9?

Regarding claim 9, the Examiner finds:

Zeng teaches about wherein the at least one of the plurality of attributes is coauthor and the co-author has been previously disambiguated (Col 3 lines 18-23, 38-55 retuned snippets/text documents/publications include data related to person's organization, location and co-occurred relationships with other person., Col 6 lines 29-40 (The examiner interprets ‘co-author’ as co-occurred relationships of a user with other person and related persons, related locations, affiliations and/or related keyword as described in Col 6 lines 29-40)).

Ans. 9.

Appellants contend the cited references fail to teach or suggest the disputed limitation because Zeng fails to teach or suggest that at least one of the plurality of attributes is co-author and the co-author has been previously disambiguated, as required by claim 9. App. Br. 30.

We find Appellants' arguments persuasive. The Examiner failed to specifically address the limitation of claim 9 requiring the co-author to have been previously disambiguated. As such, we are constrained by the record to not sustain the Examiner's obviousness rejection of claim 9 under 35 U.S.C. § 103(a).² Because we find this issue to be dispositive as to the rejection of claim 9, we do not reach Appellants' remaining contentions regarding the patentability of this claim.

§ 103 Rejection of Claims 10–14

CLAIM 10

Issue: Did the Examiner err in finding that the combination of Zeng and Ellis teaches or suggests “determining, based on computer readable data, a plurality of clusters of items, wherein each cluster is associated with a unique entity; [and] determining, by a program controlled data processor,

² 37 C.F.R. § 1.104(c)(2) (“In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”). The procedural burden of establishing a prima facie case is carried when the 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. This section ““is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (quoting *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990)).

one or more connections between the pluralities of clusters, wherein said one or more connections relate to co-authorship,” as recited in claim 10?

Appellants contend the cited references fail to teach or suggest the disputed limitations. App. Br. 30–33. In particular, Appellants contend Zeng fails to teach or suggest “determining . . . one or more connections between the pluralities of clusters,” as recited in claim 10. App. Br. 30–31. According to Appellants, claim 10 requires that the one or more connections be determined between clusters associated with unique entities. App. Br. 31. Appellants contend Zeng teaches merging clusters associated with the same entity and, therefore, fails to teach or suggest determining connections between clusters associated with unique entities, as required by claim 10. *Id.*

We find Appellants’ contention persuasive. The Examiner finds Zeng teaches “determining . . . one or more connections between the pluralities of clusters,” because Zeng teaches identifying and merging clusters that share common entities. Ans. 10 (citing Zeng, Figs. 1, 2; 4:35–65, 5:1–10). However, the Examiner’s findings fail to explain how identifying and merging clusters representing the same person, as taught by Zeng, teaches or suggests determining one or more connections between clusters, each of the clusters being associated with a unique entity (e.g., person). The Examiner does not find the teachings of Ellis remedies the deficiency in the teachings of Zeng. As such, we do not sustain the Examiner’s rejection of claim 10 or claims 11–14, which depend therefrom, under 35 U.S.C. § 103(a).

Because we find this issue to be dispositive as to the rejection of claims 10–14, we do not reach Appellants’ remaining contentions regarding the patentability of claim 10.

§ 103 Rejection of Claims 16, 17, and 20–23

CLAIM 16

Issue: Did the Examiner err in finding that the combination of Zeng, Ellis, and Marin teaches or suggests “determining, based on computer readable data, a plurality of clusters of items, wherein each cluster is associated with a unique entity; [and] determining, by a program controlled data processor, one or more connections between the pluralities of clusters,” as recited in claim 16?

Claim 16 stands rejected under 35 U.S.C. § 103(a) based on Stackpole, Zeng, Ellis, and Marin and recites “determining, based on computer readable data, a plurality of clusters of items, wherein each cluster is associated with a unique entity; [and] determining, by a program controlled data processor, one or more connections between the pluralities of clusters.” The Examiner does not find the teachings of Stackpole and Marin cure the deficiencies in the teachings of Zeng and Ellis discussed *supra*, with respect to claim 10. Accordingly, we do not sustain the Examiner’s rejection of claim 16 and claims 17 and 20–23, which depend therefrom, for the reasons discussed above with respect to claim 10.

Because we find this issue to be dispositive as to the rejection of claims 16, 17, and 20–23, we do not reach Appellants’ remaining contentions regarding the patentability of claim 16.

DECISION

We affirm the Examiner’s rejection of claims 1, 2, 4, 6–14, 16, 17, and 20–23 under 35 U.S.C. § 101.

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We affirm the Examiner's rejection of claims 1, 2, 4, and 6–8 under 35 U.S.C. § 103(a).

We reverse the Examiner's rejection of claims 9–14, 16, 17, and 20–23 under 35 U.S.C. § 103(a).

Because at least one rejection encompassing all claims on appeal is affirmed, the decision of the Examiner 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)(1)(iv).

AFFIRMED