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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GURUDUTH S. BANAVAR, SUHAS M. BHIDE,
SUGATA GHOSAL, and RENUKA R. SINDHGATTA

Appeal 2016-002661
Application 13/225,874¹
Technology Center 3600

Before BRUCE R. WINSOR, JOSEPH P. LENTIVECH, and
PHILLIP A. BENNETT, *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 1–24, the only claims pending in the application on appeal. 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 International Business Machines Corporation. App. Br. 1.

STATEMENT OF THE CASE

Appellants' Invention

Appellants' invention generally relates to “a data processing method and system for managing business relationships with clients, and more particularly to a technique for modeling, monitoring and assessing a relationship between a provider and a client.” Spec. ¶ 1. Claim 1, which is illustrative, reads as follows:

1. A method of managing a relationship between a provider and a client, the method comprising the steps of:

a computer generating a first model of one or more projects in which the provider is providing a service to the client, wherein the provider and the client are business entities;

the computer generating a second model of first levels of a first organizational structure of the provider and second levels of a second organizational structure of the client;

the computer generating a third model of a first set of stakeholders having respective roles in the provider, a second set of stakeholders having respective roles in the client, and interactions between the first set of stakeholders and the second set of stakeholders;

based on the first, second and third models, the computer determining factors that influence the relationship between the provider and the client;

the computer obtaining answers to first and second sets of questions based on, respectively, the roles of the first and second sets of stakeholders;

the computer continuously mining data from emails that include information about the one or more projects;

the computer capturing, in a freeform entry field, first positive and negative experiences of the first set of stakeholders as feedback in the one or more projects;

the computer capturing, in the freeform entry field, second positive and negative experiences of the second set of stakeholders as feedback in the one or more projects; and

based in part on the factors, the answers to the first set of questions based on the roles of the first set of stakeholders, the answers to the second set of questions based on the roles of the second set of stakeholders, the continuously mined data from the emails, the captured first positive and negative experiences of the first set of stakeholders, and the captured second positive and negative experiences of the second set of stakeholders, the computer evaluating trust in the relationship and determining whether actions are needed to improve the trust in the relationship.

References

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

| | | |
|--------------|--------------------|----------------------------|
| Clark et al. | US 2006/0184483 A1 | Aug. 17, 2006 ("Clark") |
| Gupta et al. | US 2006/0224437 A1 | Oct. 5, 2006 ("Gupta") |

Maria Cristina Lander et al., *Trust-building Mechanisms Utilized in Outsourced IS Development Projects: A Case Study*, 41 *Information & Management* 509–528 (2004) (hereinafter "Lander").

Heiko Gewalt and Kay Helbig, *A Governance Model for Managing Outsourcing Partnerships, A View from Practice*, Proc. of the 39th Hawaii International Conference on System Sciences (2006) (hereinafter "Gewald").

Rejections

Claims 1–24 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–3.

Claims 1–24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Gewald, Gupta, Clark, and Lander. Final Act. 8–28.

Issues on Appeal

Did the Examiner err in finding that claims 1–24 are directed to nonstatutory subject matter under 35 U.S.C. § 101?

Did the Examiner err in finding that the combination of Gewald, Gupta, Clark, and Lander teaches or suggests

based in part on the factors, the answers to the first set of questions based on the roles of the first set of stakeholders, the answers to the second set of questions based on the roles of the second set of stakeholders, the continuously mined data from the emails, the captured first positive and negative experiences of the first set of stakeholders, and the captured second positive and negative experiences of the second set of stakeholders, the computer evaluating trust in the relationship and determining whether actions are needed to improve the trust in the relationship

(hereinafter the “evaluating limitation”), as recited in claim 1?

ANALYSIS

Rejection under 35 U.S.C. § 101

Patent eligibility is a question of law that is reviewable *de novo*. *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). 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 ‘abstract ideas’ category embodies the longstanding rule that ‘[a]n idea of itself is not patentable.’” *Id.* at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (quotations omitted)).

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) (emphasis added). 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). Thus, we first analyze the claims to determine whether the claims embody an abstract idea. If they do, then we proceed to determine whether the claims are meaningfully limited to a patent-eligible application of an abstract idea or cover nothing more than the abstract idea itself.

Turning to the first step of our analysis, we must determine whether the claims at issue are directed to a patent-ineligible concept, such as an abstract idea. *See Alice*, 134 S. Ct. at 2355. In order to determine whether claims at issue are directed to an abstract idea, we must first determine what the claims are directed to. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016).

The Examiner finds the claims “are directed to the abstract idea of organizing human activities of managing a relationship between a provider and a client.” Final Act. 2.

Appellants agree that the claims are directed to managing a relationship between a provider and a client, but contend “the Examiner’s reliance on ‘organizing human activities’ as at least one of the bases for the abstract idea allegation is founded on fallacious reasoning.” App. Br. 13; *see also* Reply Br. 3. Appellants argue in *Bilski v. Kappos*, 561 U.S. 593 (2010), “the Court is not asserting that *all* methods of organizing human activity are abstract ideas; rather, the Court is saying that *some* methods of organizing human activity are abstract ideas, such as the methods of organizing human activity in *Bilski* and *Alice*.” App. Br. 14–15. Appellants argue the Examiner, therefore, “has not provided a *valid* rationale (i.e., a rationale not based on a logical fallacy) for stating that the claims are directed to the abstract idea characterized by the Examiner as ‘organizing human activities.’” App. Br. 15.

We do not find Appellants’ contention persuasive. The Examiner finds, and we agree, the claims recite

[A] method of a computer generating models showing the relationships, organizational structure and roles between the first set of stakeholders (provider) and the second set of stakeholders

(client), based on that the computer determine factors that influence their relationship between them and gather answers from both set of stakeholders of their roles, mine data from emails about their projects, gather positive and negative experiences feedback from both set of stakeholders related to their projects, based on the collected data and the factors, the computer evaluate trust in their relationship and determine if actions are needed for improvement.

In other words, the claimed method simpl[y] describes the concept of gathering and analyzing/combining data by reciting steps of organizing information through a mathematical relationships e.g., evaluating trust. The gathering and analysis/combining data merely employs the analysis of the provider and client relationship e.g. models generated based on collected attributes that determine factors that are evaluated in conjunction with the data collected, to manipulate existing information to generate additional information in the form of a trust evaluation.

Final Act. 3 (paragraphing added). 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 Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).

We are also not persuaded by Appellants’ contention that an abstract idea “is [a] special legal term, which has a meaning that is distinguished from its ordinary dictionary meaning” and abstract ideas are “concepts that are *fundamental and essential* to an area of science or commerce” (App. Br. 17 (citing *Alice*, 134 S. Ct. at 2355–57)) because Appellants’ Specification describes managing the relationship between a service provider and a client as being within the meaning of Appellants’ proposed definition of an abstract idea. For example, Appellants’ Specification provides “[t]he quality of relationships between a service provider and clients plays a *crucial* role in the growth of the business of the service

provider” and “[t]he relationship between the IT service provider and the client . . . *needs* to be monitored to sustain the business of the service provider.” Spec. 2 (emphasis added). Thus, the Specification teaches that managing a relationship between a provider and a client is a fundamental and essential economic practice to an area of commerce (e.g., IT services).

Appellants’ contention that no special significance can be assigned to the presence of a mathematical relationship in the claims (App. Br. 20–21; Reply Br. 4–5) is not persuasive because analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, has been treated as being essentially a mental process within the abstract-idea category. *See, e.g., In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014).

Turning to step two, the Examiner finds the claims recites “a computer, a generic computer structure that serves to perform generic computer functions (generating models based on collected attributes, obtaining answers, mining data, capturing data such as feedback, analysis/calculation (trust)), that are well-understood, routine, and conventional activities previously known to the pertinent industry” and, therefore, “do not amount to more than the abstract idea itself.” Final Act. 4 (citing Spec. ¶¶ 66, 80).

Appellants’ contend the claims recite “significantly more” because

Appellants’ claims, which indicates that Appellants’ recited step of “determining whether actions are needed to improve the trust in the relationship” along with its **six** bases is a feature that was not included in known art and thus was not “previously engaged in by those in the field.” Thus, the aforementioned claimed

limitation includes additional elements that amount to “significantly more” than the judicial exception.

App. Br. 23. Appellants argue “[t]he Court in *Flook* states that “[e]ven though a phenomenon of nature or mathematical formula may be well known, **an inventive application of the principle may be patented**” and “[i]n Appellants’ independent claims, the bases for the trust evaluation are also the bases for an *application* of the trust evaluation.” App. Br. 24 (citing *Parker v. Flook*, 437 U.S. 584, 594 (1978)). Appellants contend the claims are analogous to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) and *California Institute of Technology v. Hughes Communications Inc.*, Case No. 2:13-cv-07245-MRP-JEM, Document 156 (CD Cal. Nov. 3, 2014) because the claims include “meaningful limitations of inventive concepts tied to a defined algorithm for implementing a particular process of managing a relationship between a provider and a client so that determining whether actions are needed to improve the trust in the relationship between the provider and the client is **based on** [the six bases described *supra*].” App. Br. 28; *see also* Reply Br. 6–8.

We are not persuaded by the Appellants’ contentions that the claims represent “significantly more” than the abstract idea exception. We agree with the Examiner’s findings that the additional elements or combination of elements in the claims “do not add a meaningful limitation to the abstract idea because they would be routine in any computer implementation.” Final Act. 4. Appellants do not direct us to, nor do we discern, any indication in the record that any specialized computer hardware or other “inventive” computer components are required. *See, e.g.*, Spec. ¶¶ 67–73, Fig. 7. Rather than reciting additional elements that amount to “significantly more” than the abstract idea, the pending claims, at best, add only a “computer,”

“central processing unit,” “memory,” “computer-readable, tangible storage device,” and/or “read-only memory,” i.e., generic components, which do not satisfy the inventive concept. *See, e.g., 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. The bare fact that a computer exists in the physical rather than purely conceptual realm ‘is beside the point.’” (citation omitted)).

The claims are also distinguishable from those in *DDR*. In *DDR*, the Federal Circuit found that the challenged claims were valid because they “specif[ied] how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional” aspects of the technology. *DDR*, 773 F.3d at 1258–59. Here, we do not discern that these claims “stand apart,” like those in *DDR* because they merely recite the performance of a known business practice using a conventional computer. *See DDR*, 773 F.3d at 1257. In other words, Appellants have not demonstrated their claimed generic computer components are able in combination to perform *functions that are not merely generic*, as the claims in *DDR*.

Appellants’ preemption argument (App. Br. 26–28; Reply Br. 9) is also unpersuasive of Examiner error. “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Id.*

For the foregoing reasons, we sustain the Examiner's rejection of claims 1–24 under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 103

Appellants contend the combination of Gewalt, Gupta, Clark, and Lander fails to teach or suggest the evaluating limitation of claim 1. App.

Br. 33. Appellants argue

Appellants' recited step of "the computer . . . determining whether actions are needed to improve the trust in the relationship" (claim 1) is "**based in part on**" (A) "factors," (B) "answers to the first set of questions based on the roles of the first set of stakeholders," (C) "answers to the second set of questions based on the roles of the second set of stakeholders," (D) "the continuously mined data from the emails," (E) "the captured first positive and negative experiences of the first set of stakeholders," and (F) "captured second positive and negative experiences of the second set of stakeholders" (claim 1; emphasis added).

A careful review of Gewalt in view of Gupta, Clark, and Lander reveals that the cited combination of art is silent as to describing the **entire** feature mentioned above, **including the "based in part on" relationship** between "the continuously mined data from the emails" and the step "the computer . . . determining whether actions are needed to improve the trust in the relationship," between "the captured first positive and negative experiences of the first set of stakeholders" and the step "the computer . . . determining whether actions are needed to improve the trust in the relationship," and between "captured second positive and negative experiences of the second set of stakeholders" and the step "the computer . . . determining whether actions are needed to improve the trust in the relationship" (claim 1; emphasis added).

App. Br. 33–34; *see also* Reply Br. 11–13.

Appellants' contention is not persuasive because they amount to allegations that the claimed invention must be expressly suggested in any

one or all of the references, rather than disputing what the *combined teachings* of the references would have suggested to those of ordinary skill in the art. However,

[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

(Citations omitted). *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981). The Examiner’s findings are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle” since the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 420, 421 (2007). Appellants do not present evidence that the resulting arrangement was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418–19).

Appellants further contend:

Gewald in view of Gupta, Clark, and Lander discloses “email . . . could be used to feed data into the ontology scheme” (Clark, paragraph [0021]), but tracking the mined emails in the cited art is the basis for **predicting “the progress of the strategic initiative and important projects”** (Clark, paragraph [0021]; emphasis added), which is different from Appellants’ recited “continuously mined data from emails” being part of the basis for “the computer . . . **determining whether actions are needed to improve the trust in the relationship**” (claim 1; emphasis added) (i.e., predicting progress of the strategic initiative and

important projects is not the same as Appellants' claimed "determining whether actions are needed to improve the trust in the relationship" in claim 1).

App. Br. 34; *see also* Reply Br. 14.

We do not find Appellants' contention persuasive. The Examiner finds, and we agree, Gupta teaches "key drivers of satisfaction are derived (660), from which improvement initiative can be based to help mend or enhance the corresponding relationships." Ans. 12 (citing Gupta ¶ 124). The Examiner also finds, and we agree, Gupta teaches generating a measure of relationship health which "can help to identify relationships that are in critical need of attention, isolate critical areas of improvement, and to identify trends across various respondent profiles and lifecycle phases in a manner that optimizes the use of vendor organizational resources." Ans. 12 (quoting Gupta ¶ 34). As such, Gupta teaches or suggests "evaluating trust in the relationship and determining whether actions are needed to improve the trust in the relationship," as recited in claim 1.

For the foregoing reasons, we are not persuaded the Examiner erred in rejecting claim 1; or claims 2–24, which are not separately argued with particularity. *See* App. Br. 35–41.

DECISION

We affirm the Examiner's rejection of claims 1–24 under 35 U.S.C. § 101.

We affirm the Examiner's rejection of claims 1–24 under 35 U.S.C. § 103(a).

Appeal 2016-002661
Application 13/225,874

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