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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/553,671	10/27/2006	Harold Moss	CAM920060070US1 (146)	4128
46321	7590	03/22/2018	EXAMINER	
CRGO LAW STEVEN M. GREENBERG 7900 Glades Road SUITE 520 BOCA RATON, FL 33434			BAHL, SANGEETA	
			ART UNIT	PAPER NUMBER
			3629	
			NOTIFICATION DATE	DELIVERY MODE
			03/22/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HAROLD MOSS and AJAMU WESLEY

Appeal 2016-002971
Application 11/553,671
Technology Center 3600

Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY,
and BETH Z. SHAW, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellants² seek our review under 35 U.S.C. § 134(a) of the Examiner’s Final Rejection of claims 1–6 and 8–17, which represent all the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Throughout this Decision we have considered the Appeal Brief filed August 7, 2015 (“App. Br.”), Reply Brief filed January 15, 2016 (“Reply Br.”), the Examiner’s Answer mailed November 20, 2015 (“Ans.”), and the Final Office Action mailed March 13, 2015 (“Final Act.”).

² Appellants identify IBM Corporation as the real party in interest. App. Br. 2.

INVENTION

Appellants' invention is directed to managing decision points in a business process. Spec. ¶ 1.

Claim 1 is representative and reproduced below:

1. A method for instant messaged forms based business process decision point facilitation, the method comprising:
 - polling a process data store to identify an occurrence of a decision point in a business process;
 - detecting the occurrence of the decision point in the business process by a business process platform host executing in memory by a processor of a computer, the business process comprising a flow of activities performed by a team of collaborators to achieve a process end point resulting in a business product, the decision point requiring at least one collaborator to provide input in order for the business process to advance to closure;
 - identifying a target collaborator for the detected decision point;
 - applying instant messaging presence awareness for the target collaborator in an instant messaging bot executing in memory by the processor of the computer;
 - constructing, by the processor, a form by retrieving at least one of a pertinent question and a requisite information for the detected decision point from the process data store and formatting the retrieved at least one of the pertinent question and the requisite information according to extensible messaging and presence protocol (XMPP), the form comprising an electronic form configured to be both completed within the instant message and also returned by instant messaging to the business process; and,
 - forwarding the form within an instant message to the target collaborator only when the target collaborator is determined to be present for instant messaging by the instant messaging bot.

REJECTIONS

The Examiner rejected claims 1–6 and 8–17 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–3.

The Examiner rejected claims 1–6 and 8–17 under 35 U.S.C. § 103(a) as being unpatentable over DeVries et al. (US 2005/0139138 A1, June 30, 2005), Shamp et al. (US 2006/0046712 A1, Mar. 2, 2006), Michaud (EP 1624613 A1, Feb. 8, 2006), and Jean et al. (US 2005/0273496 A1, Dec. 8, 2005). Final Act. 4–9.

CONTENTIONS AND ANALYSIS

We have reviewed Appellants’ arguments in the Briefs, the Examiner’s rejection, and the Examiner’s response to Appellants’ arguments. Appellants do not proffer sufficient argument or evidence for us to find error in the Examiner’s findings. For at least the reasons discussed below, we agree with and adopt the Examiner’s findings and conclusions in the Final Action and Answer.

Section 101 Rejection

The Examiner determines claims 1–6 and 8–17 are directed to the concept of instant messaged forms based business decision point facilitation including polling a process data, detecting the occurrence of the decision point in business process, identify a target collaborate, applying presence awareness for target collaborator, constructing form within instant message and forwarding form to target collaborator which is a certain method of organizing human activities and/or comparing new and stored information and using rules to identify options.

Ans. 3. Therefore, the Examiner determines the claims are drawn to an abstract idea. *Id.* The Examiner also determines additional elements recited

in these claims do not amount to significantly more than the abstract idea itself. *Id.*

Appellants present several arguments against the 35 U.S.C. § 101 rejection. App. Br. 6–14; Reply Br. 2–7. Appellants contend the claims are not directed to an abstract idea and that the claims amount to significantly more than an abstract idea. *Id.*

We do not find Appellants’ arguments persuasive. The Supreme Court has long held that “[l]aws 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 *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). “The ‘abstract ideas’ category embodies ‘the longstanding rule that ‘[a]n idea of itself is not patentable.’” *Id.* at 2355 (alteration in original) (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–78 (2012)). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.*

If the claims are directed to a patent-ineligible concept, the second step in the analysis 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*, 566 U.S. at 77–79). 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*, 566 U.S. at 77–78). 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).

Addressing the first step of the *Alice* inquiry, we agree that Appellants’ claims are directed to an abstract idea, as explained by the Examiner. Ans. 3. The steps recited in Appellants’ claims are abstract processes of business decision point facilitation using data. *Cf. Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“collecting information, analyzing it, and displaying certain results of the collection and analysis” is abstract); *In re Salwan*, 681 F. App’x 938, 941 (Fed. Cir. 2017) (affirming the rejection under § 101 of claims directed to “storing, communicating, transferring, and reporting patient health information,” noting that “while these concepts may be directed to practical concepts, they are fundamental economic and conventional business practices”); *Cyberfone Systems, LLC v. CNN Interactive Grp, Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (nonprecedential) (“using categories to organize, store, and transmit information is well-established”); *Apple, Inc. v. Ameranth*, 842 F.3d 1229, 1241 (Fed. Cir. 2016) (“ability to generate menus with certain features” held abstract).

Turning to the second step of the *Alice* inquiry, the limitations in Appellants’ claims do not add anything “significantly more” to transform

into a patent-eligible application the abstract concept of business decision point facilitation using data. *Alice*, 134 S. Ct. at 2357.

The specific details of the claims are not “significantly more” than the abstract idea, contrary to Appellants’ arguments (Reply Br. 4–6). These are ordinary steps in data analysis and are recited in an ordinary order. Ans. 4. Limiting an abstract concept of facilitating business decisions using data to a general purpose computer having generic components, such as the “processor” and “computer” recited in Appellants’ claim 1, does not make the abstract concept patent-eligible under 35 U.S.C. § 101.

As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358; *see id.* at 2359 (concluding claims “simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer” are not patent eligible).

Lastly, we determine Appellants’ claims are neither rooted in computer technology as outlined in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), nor do they seek to improve any type of computer capabilities, such as a “self-referential table for a computer database” outlined in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). Although Appellants argue the pending claims are “likely to be patent eligible” based on *DDR Holdings* (Reply Br. 5–6), we disagree because Appellants overlook that our reviewing court cautioned against Appellants’ position in its *DDR Holdings* decision. *See DDR Holdings*, 773 F.3d at 1258. The claimed invention in *DDR Holdings* did not merely use the Internet or a computer in a specific way, but rather changed how

interactions on the Internet operated. Appellants' claims are not rooted in computer technology as outlined in *DDR Holdings*.

Because Appellants' claims are directed to a patent-ineligible abstract concept and do not recite something "significantly more" under the second prong of the *Alice* analysis, we sustain the Examiner's rejection of these claims under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter in light of *Alice* and its progeny.

For these reasons, and for the additional reasons stated in the Final Rejection and Answer, we sustain the 35 U.S.C. § 101 rejection of claims 1–6 and 8–17.

Section 103 Rejection

We do not concur with Appellants' conclusion that the Examiner erred in rejecting claims 1–6 and 8–17 under 35 U.S.C. § 103 as unpatentable over DeVries, Shamp, Michaud, and Jean.

First, Appellants argue the claim language requires the polling of a process data store to identify an occurrence of a decision point in a business process, but DeVries describes how one component directs other components to obtain data from a historian and manipulate the data so that different curves can be created. App. Br. 18. Appellants argue DeVries describes obtaining data from the historian, but there is no teaching about polling the historian, and that "obtaining data is not equivalent to polling for data." *Id.* In addition, Appellants argue, DeVries fails to teach or suggest how the data, such as flow rate of fluid, viscosity of the fluid, and ambient temperature of water, stored in the historian identifies an occurrence of a decision point in a business process. *Id.* "In other words, the historian just stores data that is used to create curves; it does not store data that identifies

an occurrence of a decision point in a business process, as required by Appellants' claim language." *Id.*

The Examiner interprets "polling a business process" as gathering data for a business process, i.e., historical readings for a process. Ans. 6. Appellants argue "polling" requires instead the continuous or automatic checking of the historian. Reply Br. 11. We agree with the Examiner's claim interpretation because the broadest reasonable interpretation of "polling a business process," based on the record, includes gathering data from a business process. Ans. 6. Apart from referring to a dictionary (Reply Br. 11), Appellants provide insufficient evidence to show that the Specification or claims limit "polling" in a way that, under a broad but reasonable interpretation, is not encompassed by DeVries's teachings of gathering data. *See* DeVries ¶¶ 5, 6, 75.

Additionally, Appellants argue neither DeVries nor Michaud teaches "constructing a form by retrieving at least one pertinent question and requisite information from the process data store and formatting such." Reply Br. 13. Appellants allege DeVries does not teach how the form is created, and in Michaud, the user generates the questions and potential answers. App. Br. 22. We are not persuaded by this argument because Michaud teaches constructing a form when Michaud teaches a survey created with a question and required responses. Michaud, Fig. 7, ¶¶ 42–43; Ans. 7; Final Act. 7. Michaud retrieves at least one question from the process data store and formats the question (e.g., by selecting response options, default options, and if the question is required). Michaud Fig. 7, ¶¶ 42, 43, 45, 45, 51. Claim 1 recites constructing a form by retrieving "*at least one of* a pertinent question and a requisite information for the detected

decision point from the process data store” (emphasis added). Although Appellants argue Michaud’s question and requisite information is not retrieved from the data store. Reply Br. 13–14. However, even if the question is entered by the survey creator, Appellants provide insufficient evidence to show that the Specification or claims limit “requisite information” in a way that, under a broad but reasonable interpretation, is not encompassed by Michaud’s teachings of required responses in the survey. Michaud, Fig. 7, ¶¶ 42, 43.

Finally, Appellants argue Jean fails to teach formatting the retrieved pertinent question or requisite information according to XMPP because Jean just teaches that a server uses XMPP, but does not teach the formatting of the retrieved pertinent question or requisite information. App. Br. 23. However, Jean is relied upon to show the use of XMPP, and Michaud is relied upon to show formatting the question. Final Act. 8; Ans. 7–8. Accordingly, we are not persuaded of error in the rejection of claim 1, and we therefore sustain the rejection of claim 1. We also sustain the rejection of claims 2–6, 8–13, and 15–17, which were not argued separately.

Dependent claim 14

With respect to dependent claim 14, Appellants argue DeVries does not teach or suggest clearing an intersect path, or clearing the path from the historian, but instead teaches diagnostic mechanisms when a simulation or calculation is not working properly. App. Br. 24. Appellants also argue paragraphs 60 and 61 of DeVries relate to replacing bad data, not to creating a new intersect path and not to creating such in the historian, and thus do not teach the claimed limitation directed to creating a new decision point. App. Br. 25.

We are not persuaded by Appellants' arguments because DeVries teaches clearing the detected decision point from the process data store, which DeVries illustrates in Figure 8B, elements 804e and 804f that show decision points, which were solved by proposed changes. DeVries ¶¶ 71, Fig 8B. Additionally, DeVries teaches creating a new decision point and adding the new decision point to the process data store because Figure 8B of DeVries shows in element 804e various new decision points that were created and added. *See also* Ans. 8 (citing DeVries ¶¶ 60, 61, 66, 81, Fig. 7B, Fig. 8B). Appellants provide insufficient evidence to show that the Specification or claims limit "clearing" or "creating" in a way that, under a broad but reasonable interpretation, is not encompassed by DeVries' teachings of solving proposed changes and adding values. Accordingly, we are not persuaded of error in the rejection of dependent claim 14, and we therefore sustain the rejection of dependent claim 14.

Accordingly, we sustain the Examiner's rejection of claims 1–6 and 8–17 under 35 U.S.C. § 103 as unpatentable over DeVries, Shamp, Michaud, and Jean.

DECISION

The decision of the Examiner to reject claims 1–6 and 8–17 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