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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SUDHAKAR CHALIMADUGU, DAVID F. CHEUNG,
RUBY L. KENNEDY, YUCHUN LEE, and PATRICK MARTIN

Appeal 2016-003378
Application 13/926,638
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, 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 50–67, 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 April 9, 2015 (“App. Br.”), Reply Br. filed February 4, 2016, the Examiner’s Answer mailed December 4, 2015 (“Ans.”) and the Final Office Action mailed November 12, 2014 (“Final Act.”).

² Appellants identify IBM Corporation as the real party in interest. App. Br. 1.

INVENTION

Appellants' invention is directed to response tracking for promotions.
Spec., Abstract.

Claim 50 is representative and reproduced below:

50. A computer implemented method for response tracking, comprising:

receiving, by a computer hardware system, a plurality of responses from contact entities to a plurality of promotions generated for a marketing campaign; and

generating, by the computer hardware system and for each of the plurality of promotions, an attribution credit, wherein

the attribution credit for a particular promotion is based upon a number of responses, from the plurality of responses, attributable to the particular promotion.

REJECTIONS

The Examiner rejected claims 50–67 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–3.

The Examiner rejected claims 50, 51, 53, 55–57, 59, 61–63, 65, and 67 under 35 U.S.C. § 102(b) as anticipated by Meisel et al. (US 2003/0033292 A1, published Feb. 13, 2003) (hereinafter “Meisel”). Final Act. 3.

The Examiner rejected claims 52, 54, 58, 60, 64, and 66 under 35 U.S.C. § 103(a) as unpatentable over Meisel and Briggs (US 2006/0041480 A1, published Feb. 23, 2006). Final Act. 5.

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 50–67 are directed to the abstract idea of determining the effectiveness of promotions. Final Act. 2–3. 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. 10–16; Reply Br. 2–4. 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 (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 [that] “‘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. 6. The steps recited in Appellants’ claims are abstract processes of tracking promotions by obtaining and storing information. *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*, Appeal No. 2016-2079, 2017 WL 957239 at *3 (Fed. Cir. Mar. 13, 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). Additionally, the claims are not directed to a specific improvement in the way computers operate. *Cf. Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

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 tracking promotions. *Alice*, 134 S. Ct. at 2357.

The specific details of the claims are not “significantly more” than the abstract idea. These are ordinary steps in data analysis and are recited in an ordinary order. Limiting an abstract concept of facilitating business decisions using data to a general purpose computer having generic components, such as the “computer hardware system” recited in Appellants’ claim 50, does not make the abstract concept patent-eligible under 35 U.S.C. § 101. *See also* Spec. 36:29–31 (“Processors suitable for the execution of a computer program include, by way of example, both general and special purpose microprocessors, and any one or more processors of any kind of digital computer.”).

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*.

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 50–67.

Section 102 Rejection

The Examiner rejected claims 50, 51, 53, 55–57, 59, 61–63, 65, and 67 under 35 U.S.C. § 102(b) as anticipated by Meisel. Final Act. 3.

Figure 7 of Meisel is reproduced below.

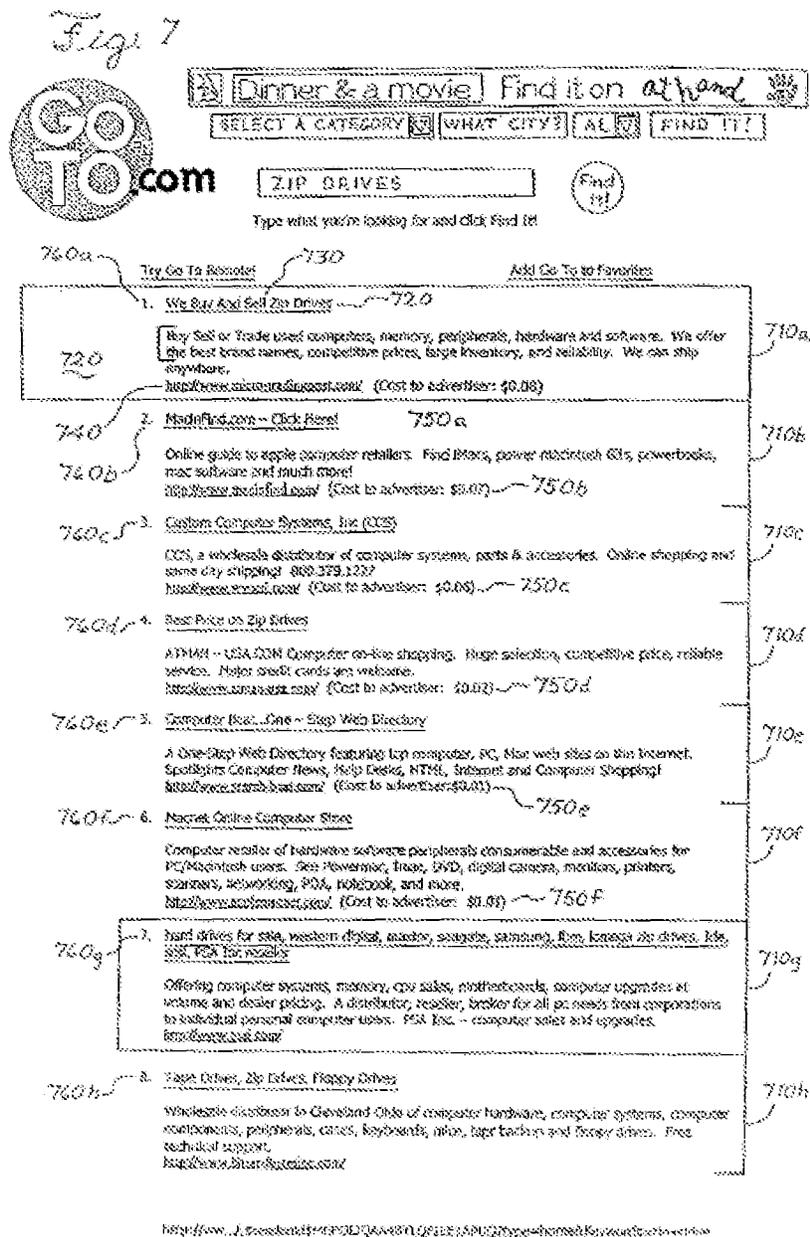


Figure 7 of Meisel illustrates a display of the first several entries resulting from a search for the term “zip drives.” Meisel ¶ 113.

Appellants argue Meisel does not disclose a “plurality of promotions generated for a marketing campaign” because the advertisements illustrated

in Figure 7 of Meisel are for different advertisers. App. Br. 17. We are not persuaded by this argument, because Meisel discloses advertisements, plural, generated for a marketing campaign represented by the results for the search on goto.com. Ans. 7; Meisel, Fig. 7, elements 760a-h. Appellants argue in the Reply Brief that these advertisements shown in Figure 7 of Meisel only teach “the ability to change . . . the rank value of a particular advertisement” such that advertisements with a high rank value will be displayed more prominently. Reply Br. 5. Thus, Appellants concede that Meisel discloses a plurality of advertisements, but argues these advertisements are not generated for “a marketing campaign.” However, Appellants provide insufficient evidence and argument to show that the Specification or claims limit “marketing campaign” in a way that, under a broad but reasonable interpretation, is not encompassed by Meisel’s teachings of the advertisements shown in Figure 7 in response to the search on goto.com.

Additionally, Appellants “concede that giving credit (to an advertiser) for a customer clicking on a link is old.” Reply Br. 6. Yet, Appellants argue Meisel only teaches giving a “single attribution credit being given to a single promotion” and not “generating . . . for each of the plurality of promotions [generated for a marketing campaign] an attribution credit,” as recited in claim 50. *Id.* at 7. Appellants argue that even though element 710a in Figure 7 shows an attribution credit, and 710b also shows a credit, “these are not two promotions within the same marketing campaign.” *Id.* at 7 n.3. We are not persuaded by this argument because, as the Examiner explains (Ans. 8), Meisel discloses that each promotion is given a credit for each click, such that multiple attribution credits are generated. Meisel, Fig. 7. Moreover, as explained above, Appellants provide insufficient evidence or analysis to

show that the Specification or claims limit “marketing campaign” in a way that, under a broad but reasonable interpretation, is not encompassed by Meisel’s teachings.

For these reasons, we sustain the rejection of claim 50 under 35 U.S.C. § 102 as anticipated by Meisel. For the same reasons, we sustain the § 102 rejection of claims 51, 53, 55–57, 59, 61–63, 65, and 67, which were not argued separately.

Section 103 Rejection

The Examiner rejected claims 52, 54, 58, 60, 64, and 66 under 35 U.S.C. § 103(a) as unpatentable over Meisel and Briggs. Final Act. 5. Claim 52 depends from claim 50 and recites, “the attribution credit for a particular response is attributed to more than a single promotion.”

Appellants argue Briggs is “completely silent as to either attribution credit or how the attribution credit *for a particular response* is attributed to more than a single promotion.” App. Br. 23. First, we note that claim 52 also does not describe “how” the attribution credit for a particular response is attributed.

Additionally, Briggs describes a method for determining advertising effectiveness. Briggs, Abstract. The Examiner relies on Meisel, not Briggs, to teach the concept of an attribution credit for a particular response. Ans. 9. The Examiner adds Briggs to teach the concept of attributing a credit to more than a single promotion, because Briggs teaches a method to determine an attribution credit allocated to different channels. Final Act. 5–6; Ans. 9 (citing Briggs ¶¶ 90–103, 116–122). For example, Briggs teaches the concept of a particular response being attributed to more than a single promotion, by teaching both online and tv promotions receiving credit. *Id.*

(citing Briggs ¶¶ 99–101). While we agree that paragraph 116 of Briggs alone states its analysis “does not indicate the effect on any one individual respondent,” the Examiner relies on the *combination* of Meisel and Briggs to teach the elements of claim 52.

Accordingly, we are not persuaded of error in the rejection of dependent claim 52, and we, therefore, sustain the rejection of claim 52. We also sustain the rejection of claims 54, 58, 60, 64, and 66 under 35 U.S.C. § 103, which were not argued separately.

DECISION

The decision of the Examiner to reject claims 50–67 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