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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOERG MITZLAFF

Appeal 2016-003447
Application 12/019,128¹
Technology Center 3600

Before JEAN R. HOMERE, JASON V. MORGAN, and
ADAM J. PYONIN, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 1–24. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Invention

Appellant discloses “using a conversational agent to collect information,” “communicat[ing] with the user to receive information related to a marketplace offering,” and “list[ing] the marketplace offering at the

¹ Appellant identifies eBay Inc. as the real party in interest. Br. 2.

computer-implemented marketplace based on the information received.”

Abstract.

Representative Claim

1. A computer-implemented method, comprising:

establishing a communication session between a user of a computer implemented marketplace and a computer implemented conversational agent associated with the marketplace that is designed to simulate a conversation with the user to gather listing information;

receiving, via the communication session, conversational information for use in generating a marketplace offering of an item from the user, the received conversational information including the listing information gathered by the computer implemented conversational agent;

parsing, by one or more processors, the conversational information received by the conversational agent to obtain the listing information; and

listing, by one or more processors, the marketplace offering on the marketplace using the listing information parsed from the conversational information received by the computer implemented conversational agent.

Rejection

The Examiner rejects claims 1–24 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 2–4.

ANALYSIS

We agree with and adopt as our own the Examiner’s findings of facts and conclusions as set forth in the Answer and in the Action from which this appeal was taken. We have considered Appellant’s arguments, but do not find them persuasive of error. We provide the following explanation for emphasis.

In rejecting claim 1, the Examiner finds the claimed invention is “directed to the judicial exception of providing shopping support which is considered to be an abstract idea.” Final Act. 3. The Examiner further finds “[t]he computing device and apparatuses to implement the [claimed] process are generic computers with functionalities which are well-understood, routine and conventional activities previously known to the industry.” *Id.* Therefore, the Examiner concludes claim 1 is directed to non-statutory subject matter that is unpatentable under 35 U.S.C. § 101.

Appellant contends the Examiner erred by failing to provide “**authoritative documentation** that the identified economic component is fundamental and long prevalent in our system of commerce.” Br. 10. Rather Appellant argues, the Examiner merely makes “a bare assertion that [the] Examiner-created summarization of the actual claim limitations is directed to an abstract idea that is a fundamental economic principle and method of organizing human activity.” *Id.* at 9. Appellant argues that the Board itself has indicated “a need to rely on actual evidence rather than conclusory statements when supporting an assertion that something is an abstract idea.” *Id.* at 10; *see also id.* at 11 (citing *PNC Bank, Nat’l Ass’n v. Secure Access, LLC*, Case No. CBM 2014-00100, Paper No. 10, Decision to Institute (PTAB 2014) (non-precedential), final written decision *rev’d-in-part* for other reasons in *Secure Access, LLC v. PNC Bank Nat’l Ass’n*, 848 F.3d 1370 (Fed. Cir. 2017)). However, Appellant does not identify any authority that requires the Office to provide “authoritative documentation” to support a finding that a claim is directed to an abstract idea. Nor does Appellant identify any authority that requires the Office to compare the identified “abstract idea to the examples provided in case law.” Br. 13.

Rather, all that is required of the Office is that it set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011); *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (noting that section 132 “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection”).

Here, the Examiner provides adequate, persuasive support. *See* Final Act. 3–5. Further, the Examiner provides additional support—i.e., not just from the claims and the Specification, but also from extrinsic sources discussing the history of topics such as automated and human-based customer support—to show that claim 1 is directed to an abstract idea. *See, e.g.*, Final Act. 3–5; Adv. Act. 2 (citing *Admiral Metals, Reflecting on the History of Customer Service*, available at <http://www.admiralmetals.com/admiral-metals/reflecting-history-customer-service/> (Dec. 10, 2014; last visited Mar. 18, 2018)); Ans. 6–7 (citing Kenneth Hein, *Soliloquy Datamines Customer Conversations*, available at <http://www.dmnews.com/dataanalytics/soliloquy-datamines-customer-conversations/article/66379/> (May 18, 2000; last visited Mar. 18, 2018)).

We agree with the Examiner that claim 1—which uses *a computer implemented conversational agent designed to simulate a conversation with a user to gather listing information to receive conversational information that is parsed to obtain listing information for listing*—is directed to a form of “shopping support.” Final Act. 3. Specifically, claim 1 relates to the practice of a customer requesting and receiving a list of marketplace offerings. Appellant contemplated potentially complex embodiments

directed to computer-implemented methods designed to replace multiple, inflexible electronic forms that could discourage users from providing sufficient information to provide electronic marketplace information. *See, e.g.*, Spec. ¶ 2; Br. 22, 26–27. However, the claimed invention is directed so broadly as to also encompass simulating the simplest of simulated conversations that use mere keywords at their core. *See, e.g.*, Fig. 4, Spec. ¶ 36 (“conversational information 212 may include auditory data 402, textual data 406, and keywords 404”); *see also* Spec. ¶ 27. Therefore, the claimed invention encompasses computer-implemented methods as basic as those that use computer technologies to supplant directories or catalogs, examples of shopping support that are abstract.

Appellant notes that even if claim 1 is directed to an abstract idea, the elements of the claim may nonetheless contain “an [‘]inventive concept[’] sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” Br. 19 (citing *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2357 (2014)). Appellant argues that “unlike the claims at issue in *Alice*, independent claim 1 does not merely state an abstract idea and add the words ‘apply it.’” Br. 20. Rather, Appellant argues, claim 1 recites a specially configured computer with recitations directed to low-levels of generality. *Id.* at 21.

Appellant’s arguments are unpersuasive because Appellant does not identify anything in the claim or in the Specification that would suggest the computer-related elements of the claimed invention represent anything more than “routine and conventional” technologies. Ans. 17. The most advanced technologies alluded to in the Specification seem to be embodiments in which “a program implementing a conversational agent 260 may use other

principles, including complex trained Artificial Intelligence (AI) algorithms.” Spec. ¶ 33. However, the claimed *conversational agent* is not limited to those implemented with complex trained artificial intelligence algorithms. Another conversational agent example (*id.*) merely describes natural language communication technologies dating back to at least 1966 (see Joseph Weizenbaum, *ELIZA—a computer program for the study of natural language communication between man and machine*, Commc’ns of the ACM, vol. 9, no. 1, pp. 36–45 (1966)). Moreover, the claimed invention is directed to merely *using* the recited computer-related elements to implement the underlying abstract idea, rather than being limited to any particular advances in the computer-related elements.

For these reasons, we are unpersuaded that claim 1 contains additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78 (2012)). Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 1, and claims 13 and 24, which Appellant argues together with claim 1. Br. 19.

Appellant also contends, without providing any specific examples, that “each dependent claim includes elements relevant to the subject matter eligibility of these claims.” *Id.* at 13. Appellant argues the Examiner erroneously “dismissed all of the dependent claims without analysis or evidence for each of the dependent claims,” and thus “failed to establish a *prima facie* case that these dependent claims are not eligible for patent protection under 35 U.S.C. § 101.” *Id.* at 14. However, the Examiner finds, with examples given, that “the dependent claims recite additional elements which are not particularly technological” or that merely “recite routine

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technical features which are not technical advances.” Ans. 9 (citing claims 7 and 12). Our own review of the dependent claims accords with the Examiner’s unrebutted characterization of these claims as failing to contain additional elements that would make any of them patent-eligible. Therefore, we also sustain the Examiner’s 35 U.S.C. § 101 rejection of dependent claims 2–12 and 14–23.

DECISION

We affirm the Examiner’s decision rejecting claims 1–24.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED