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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILSON T. MacDONALD, EITAN HADAR, and
STEVEN L. GREENSPAN

Appeal 2016-003727¹
Application 13/547,796²
Technology Center 3600

Before BIBHU R. MOHANTY, TARA L. HUTCHINGS, and
AMEE A. SHAH, *Administrative Patent Judges*.

HUTCHINGS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1, 4–6, 8, 9, 12–14, 16, 17, 20–22, and 24. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our Decision references Appellants’ Appeal Brief (“Br.,” filed July 20, 2015), the Examiner’s Answer (“Ans.,” mailed Dec. 4, 2015) and Final Office Action (“Final Act.,” mailed Feb. 12, 2015).

² Appellants identify CA, Inc., as the real party in interest. Br. 5.

CLAIMED INVENTION

Appellants' claimed invention relates to "facilitating the provisioning and consumption of event-based information." Spec. ¶ 1.

Claims 1, 9, and 17 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for accommodating provisioning and consumption of information, the method comprising:

receiving, from an information consumer, subscription information comprising a request for information associated with a complex event;

receiving information from a plurality of information providers, the information comprising normalized metric data and meta-data, the normalized metric data comprising metric information collected from a sensor that has been normalized to a Unified Service Model by a connector, the metric information representing physical properties of an environment measured by the sensor, and the meta-data comprising information that describes the normalization of the metric information by the connector;

deriving, by one or more processors, the information associated with the complex event from the information received from the plurality of information providers based on the subscription information received from the information consumer, the deriving comprising:

selecting from the normalized metric data, for each information provider of the plurality of information providers, a piece of normalized metric data that was provided by the information provider and that is related to the complex event, such that a plurality of pieces of normalized metric data that are related to the complex event are selected and the selected plurality of pieces of normalized metric data includes at least one piece of normalized metric data from each information provider of the plurality of information providers; and

generating complex event data from the selected plurality of pieces of normalized metric data by

transforming and correlating the selected plurality of pieces of normalized metric data, such that the information associated with the complex event comprises the complex event data;

storing the information associated with the complex event in a memory device;

determining, for each of the plurality of information providers, a first payment value based on the piece of normalized metric data that was provided by the information provider, such that a plurality of first payment values are determined;

determining a second payment value for the information consumer based on the selected plurality of pieces of normalized metric data used to generate the complex event data; and

transmitting the information associated with the complex event to the information consumer.

REJECTIONS³

Claims 1, 4–6, 8, 9, 12–14, 16, 17, 20–22, and 24 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 4, 8, 9, 12, 16, 17, 20, and 24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bursey (US 2009/0089078 A1, pub. Apr. 2, 2009), Stephen Tyler, *delivery integrated IT management solutions*, TECH. BRIEF: INTEGRATION STRATEGY FROM CA TECHS., 2–15 (May 2011) (hereinafter “Tyler”), and Blott (US 2004/0044622 A1, pub. Mar. 4, 2004).

Claims 5, 13, and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bursey, Tyler, Blott, and Quinones (US 6,904,449 B1, iss. June 7, 2005).

Claims 6, 14, and 22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bursey, Tyler, Blott, Quinones, and Infosys Techs., Ltd.,

³ The Examiner has withdrawn the rejections of the claims under 35 U.S.C. §§ 112, first and second paragraphs. Ans. 3–4.

7 SETLABS BRIEFINGS: CLOUD COMPUTING, 3–94 (Praveen B. Malla et al., eds., 2009) (hereinafter “SETLabs”).

ANALYSIS

Non-Statutory Subject Matter

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (internal citation and quotations omitted).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (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 Corp.*, 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.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78).

“The ‘abstract idea’ step of the inquiry calls upon us to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257–58 (Fed. Cir. 2016) (internal citations omitted). Here, exemplary claim 1 recites a method for accommodating provisioning and consumption of information. The method performs the steps of receiving information, deriving information, storing information, determining a first payment value, determining a second payment value, and transmitting information. According to the Specification, the inventors recognized that “events and subsequent changes may be of interest to business owners or analysts interested by the phenomena that caused the change, rather than the change itself.” Spec. ¶ 16. For example, “businesses may not know . . . what sensors and monitored data the next generation of products may provide,” making it difficult for businesses to accurately predict consumers and/or products interested in consuming the data. *Id.* ¶ 17; *see also id.* ¶ 20. Also, “businesses may collect data that is valuable to other business[es] and may wish to easily monetize their data collections.” *Id.* ¶ 18. “In an evolving landscape of inexpensive sensors . . . and in a business environment that requires real-time decisions to maintain competitive advantages,” businesses need a way to offer new data elements, provide detailed event information regarding particular situations, and inform other businesses when significant changes are detected. *Id.* ¶¶ 18, 21.

To address these business challenges, Appellants’ invention offers “complex event or situation detection and processing as a service” and “a revenue model based on selling this service, and monetizing reusable

complex situational roles.” *Id.* ¶ 22. In an agricultural industry embodiment, a farm uses sensors gathering information, such as temperature, soil pH, humidity, and wind speed, to monitor the viability of its crops. *Id.* ¶ 24. The information gathered from the sensors provides the farms with information to determine the best crops to plant and helps establish procedures to tend to the crops. *Id.* For example, a farm may not water the crops when sensor information is used to predict and approaching storm. *Id.* However, Appellants’ claimed invention recognizes that this information also may be of value to other nearby farms to predict local growing or weather conditions. *Id.* The information also may be of use to agricultural future traders to predict crop yields and set appropriate prices. *Id.*

Therefore, we agree with the Examiner’s determination that the claims are directed to “providing information to information subscribers,” which is an abstract idea. Final Act. 5; Ans. 6. In our view, the claimed method for providing information to an information consumer is not meaningfully distinct from claims involving the collection, organization, manipulation, or display of data that have been deemed patent-ineligible by the Federal Circuit. For example, in *Electric Power Group*, the Federal Circuit held that claims focused “on collecting information, analyzing it, and displaying certain results of the collection and analysis” are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Stating that “[i]nformation as such is an intangible,” the Federal Circuit in *Electric Power Group* noted that the Federal Circuit has “treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract

ideas.” *Id.* (internal citations omitted). The Federal Circuit pointed out that “[i]n a similar vein, . . . [it has] treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Id.* at 1354. Similar to the situation in *Electric Power Group*, the advance Appellants’ claims “purport to make is a process of gathering and analyzing information of a specified content, then . . . [transmitting] the results, and not any particular assertedly inventive technology,” i.e., an abstract idea. *Id.* The claims involve the same general steps of collecting, processing, and presenting of information.

Appellants argue that the claims are not directed to an abstract idea. Br. 17. Specifically, Appellants criticize the Examiner for oversimplifying the claims, and repeat the language of claim 1. *Id.* However, Appellants do not persuade us that the claims focus on a technological improvement, and not a process that itself is abstract.

Turning next to step two of the framework, Appellants argue that, even if claim 1 is found to be directed to an abstract idea, the recited combination of elements amounts to significantly more than the abstract idea. *Id.* at 17–18. Appellants assert that the combination of claim limitations for “receiving information . . . comprising normalized metric data,” and “transforming and correlating” this information to derive complex event information “ultimately allows a subscribed consumer to obtain insight into a complex event related to the physical properties of the environment (*e.g.*, a predicted crop yield that can be used to determine futures prices, weather patterns that can be used to determine the future demand for water in a region).” *Id.* at 18–19 (citing Spec. ¶¶ 16, 18, 19, 24). Appellants

charge that “the holistic combination of the claimed functions produces a concerted result (*e.g.*, providing an aggregation of data from a plurality of different sources tailored to a consumer’s needs and/or desires) that is more than a mere combination of such functions performed separately.” *Id.* at 19. Yet, this is the abstract idea itself. *See Elec. Power Grp.*, 830 F.3d at 1355 (“merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas”).

Moreover, instead of focusing on the technical implementation details of these claimed functions, claim 1 recites no more than the result of the functions. Such claims are drawn to an abstract idea because they “‘claim[] the function of [the abstract idea], not a particular way of performing the function.’” *Move, Inc. v. Real Estate Alliance Ltd.*, 2017-1463, 2018 WL 656377, at *4 (Fed. Cir. Feb. 1, 2018) (quoting *Affinity Labs*, 838 F.3d at 1258) (“There is nothing in claim 1 that is directed to *how* to implement [the abstract idea]. Rather, the claim is drawn to the abstract idea itself.”). We agree with the Examiner (*see* Final Act. 5; Ans. 5–9) that there is no inventive concept in the individual claim limitations or their ordered combination.

Appellants argue that “the deficient cited art of record” shows that the claimed features are not well-understood or routine in the field. Br. 19; *see also id.* at 20 (disputing that the claimed “processor” and “system” of independent claims 9 and 17 do not perform generic computer functions that are well-understood, routine, and conventional, because the Examiner does not establish a *prima facie* obviousness rejection of the claims). However,

although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness. Instead, it is a search for “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.’”

Alice Corp., 134 S. Ct. at 2355 (internal citation omitted). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013).

Appellants additionally argue with respect to independent claims 9 and 17 that the claimed “processor” and “system” add significantly more to the abstract idea. Br. 20. However, “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (citing *Alice Corp.*, 134 S. Ct. at 2358).

We are not persuaded, for the reasons set forth above, that the Examiner erred in rejecting any of the claims under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

Obviousness

Independent Claims 1, 9, and 17, and Dependent Claims 4, 8, 12, 16, 20, and 24

We are persuaded by Appellants' argument that the Examiner erred in rejecting independent claims 1, 9, and 17 under 35 U.S.C. § 103(a) because the combination of Bursey and Tyler does not disclose at least

selecting from the normalized metric data, for each information provider of the plurality of information providers, a piece of normalized data that was provided by the information provider and that is related to the complex event, such that . . . the selected plurality of pieces of normalized metric data includes at least one piece of normalized metric data from each information provider of the plurality of information providers[.]

as recited in claim 1, and similarly recited in claims 9 and 17. Br. 42–43.

The Examiner relies on Bursey as disclosing the argued limitation. Final Act. 15 (citing Bursey, Fig. 1, block 122, Fig. 2, block 224, Fig 10, block 1004, Abstract, ¶¶ 14, 18, 230, 287, 322, 378, and 385). We have reviewed the cited portions of Bursey. Yet, we find nothing that discloses or suggests the argued limitations.

Bursey relates to an enterprise geospatial intelligence service oriented architecture (EGI-SOA) that provides a consumer with one or more tailored products in response to either a dynamic request or a standing request by the consumer. Bursey, Abstract. Service brokers 122 discover a relevant set of web services that match a specified request. *Id.* ¶ 287, Fig. 1. An EGI-SOA comprises, among other components, event cloud 214 and complex event processor (CEP) 224, which are connected through a complex event-driven enterprise service bus (CED-ESB). *Id.* ¶ 294, Fig. 2; *see also id.* at Fig. 10 (depicting CEP 1004 connected to even cloud 1012 via CED-ESB 1002).

The CEP “filter[s] the event cloud for patterns matching the defined event template patterns.” *Id.* ¶ 304. Bursey describes filtering the event cloud “for patterns” matching template patterns. But, filtering events to match patterns does not disclose or suggest selecting at least one piece of normalized metric data from each information provider of the plurality of information providers, as required by claims 1, 9, and 17.

Paragraph 230 describes that a tailored product refers to a product defined by a specification that includes variable parameters. The parameters may be specified by a standing governance policy specified by a community of interest (COI). In one example, Bursey describes producing “two different ortho-image resultant products” when two different sources are available, because one governance policy (COI “A”) specifies data from a “best available” source; whereas, another policy (COI “B”) specifies data from a particular source. *See id.* In other words, rather than using at least one piece of normalized metric data from each information provider to produce a single tailored product, Bursey describes using data from only one source to create a first tailored product and data from only a second source to create a second tailored product.

In view of the foregoing, we do not sustain the Examiner’s rejection of independent claims 1, 9, and 17, and dependent claims 4, 8, 12, 16, 20, and 24 under 35 U.S.C. § 103(a).

Dependent Claims 5, 6, 13, 14, 21, and 22

The Examiner’s rejections of dependent claims 5, 6, 13, 14, 21, and 22 do not cure the deficiency in the Examiner’s rejection of independent claims 1, 9, and 17. Therefore, we do not sustain the rejections of dependent

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claims 5, 6, 13, 14, 21, and 22 under 35 U.S.C. § 103(a) for the same reasons set forth above with respect to the independent claims.

DECISION

The Examiner's rejection of claims 1, 4–6, 8, 9, 12–14, 16, 17, 20–22, and 24 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejections of claims 1, 4–6, 8, 9, 12–14, 16, 17, 20–22, and 24 under 35 U.S.C. § 103(a) are reversed.

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