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EXAMINER

TORRICO-LOPEZ, ALAN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL OLIVIER, RACHEL SANDERS, ALEX VAUTHEY,
and EVAN BRYNNE

Appeal 2016-003982
Application 13/706,162¹
Technology Center 3600

Before JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–12 and 14–22. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ Appellants identify LinkedIn Corporation as the real party in interest. Appeal Br. 2.

THE INVENTION

Appellants' claims relate to methods and systems "for providing a system and method to schedule interviews for job candidates and/or meetings within a business organization, . . . for conducting interviews of job candidates and/or meetings within a business organization, and . . . for evaluating interviewers of job candidates and/or participants in meetings within a business organization." Specification ¶ 1.

Claim 1 reproduced below, is representative of the subject matter on appeal.

1. A system comprising:
 - a computer processor configured to:
 - receive data relating to a plurality of job interviews;
 - store the data in a computer storage device; and
 - analyze the data relating to the plurality of job interviews to determine an effectiveness of an interviewer and an effectiveness of an interview process;
 - wherein the computer processor is configured to compare job candidate data for all job candidates who successfully passed all interviews, all job candidates who were rejected, and job performance data of the job candidates who were hired.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Sack	US 5,259,766	Nov. 9, 1993
Neece	US 2003/0037032 A1	Feb. 20, 2003
Round	US 2006/0224442 A1	Oct. 5, 2006
Pfenninger	US 2006/0235884 A1	Oct. 19, 2006
Reynolds	US 2008/0065471 A1	Mar. 13, 2008
Hartmann '284	US 2008/0172284 A1	July 17, 2008
Tonnison	US 2008/0282160 A1	Nov. 13, 2008

Dewar	US 2010/0042574 A1	Feb. 18, 2010
Hartmann '635	US 7,991,635 B2	Aug. 2, 2011
O'Malley	US 2011/0276507 A1	Nov. 10, 2011
MacArthur	US 2012/0078803 A1	Mar. 29, 2012
Sahagun	US 2012/0109837 A1	May 3, 2012
Younger	US 2012/0109838 A1	May 3, 2012
Brun	US 2012/0245924 A1	Sept. 27, 2012
Kolber	US 2013/0097093 A1	Apr. 18, 2013

Charlotte Garvey, *The Next Generation of Hiring Metrics*, 50 HR Magazine (April 2005).

The following rejections are before us for review²:

Claims 1–12 and 14–22 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1–4 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dewar, Hartmann '284, and Garvey.

Claim 5 is rejected under 35 U.S.C. § 103(a) as unpatentable over Dewar, Hartmann '284, Garvey, and MacArthur.

Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, Tonnison, and Sack.

Claim 8 is rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, Sahagun, and Neece.

Claim 9 is rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, and Brun.

Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, Pfenninger, and Round.

² The Examiner withdrew the rejection of claims 19–22 under 35 U.S.C. § 112, first paragraph. (Answer 2).

Claim 12 is rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, and Pfenninger.

Claims 14, 16, and 17 are rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, Pfenninger, and Reynolds.

Claim 15 is rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, Pfenninger, Reynolds, O'Malley, and Hartmann '635.

Claim 18 is rejected under 35 U.S.C. § 103(a) over Dewar, Hartmann '284, Garvey, Pfenninger, Reynolds, Younger, and Kolber.

Claims 19–22 are rejected under 35 U.S.C. § 103(a) over Dewar and Reynolds.

ANALYSIS

35 U.S.C. § 103 REJECTION

Independent claim 1 recites in pertinent part, “configured to compare job candidate data for all job candidates who successfully passed all interviews, all job candidates who were rejected, and job performance data of the job candidates who were hired.”

Appellants argue,

Appellant[s] respectfully submit[] that a general statement relating to deeper data analysis, whether jobs are being filled with the right people, and whether a company is hiring better people, is not a disclosure of the claimed feature of comparing data for candidates who were rejected with job performance data of candidates who were hired. Moreover, the easy measure of the number of jobs that a recruiter is filling is not a disclosure of either data for candidates who were rejected or job performance data of candidates who were hired.

(Appeal Br. 15).

The Examiner however found,

Garvey teaches: *comparing* job candidate data for all job candidates who successfully passed all interviews, all job candidates who were rejected and job performance data of the job candidates who were hired (Garvey Page 3: **HR also puts out a recruitment effectiveness scorecard, which Janusz describes as using “a funnel approach” to data analysis. The report card first looks at the number of job applicants and whether they were recommended for an interview, as well as whether they were actually interviewed or hired. Then, “we cut that data by diversity and source,” he notes. “We look at how we are leveraging those sources so we source more effectively[]”**; *analyses/compares data involving job applicants and whether they were recommended for interview (rejected or not rejected) as well as those who were interviewed and hired.* Page 4:

(Final Act. 7).

We agree with Appellants. We do not agree with the Examiner’s finding that Garvey meets the claimed “compar[ing] job candidate data for all job candidates who successfully passed all interviews, all job candidates who were rejected, and job performance data of the job candidates who were hired.” What Garvey discloses is “[t]he report card first looks at the number of job applicants and whether they were recommended for an interview, as well as whether they were actually interviewed or hired.” Garvey p. 3. Garvey does not compare this data but rather uses it to create a “score card.” According to Garvey, this data is cut by “diversity and source” to arrive at the score card. *Id.* 3. It is not apparent and the Examiner does not explain how this data manipulation equates to the claimed comparing step.

Because claims 2–12 and 14–18 depend from claim 1, and inasmuch as we cannot sustain the rejection of claim 1, the rejection of claims 2–12, and 14–18, likewise, cannot be sustained.

Independent claim 19 recites in pertinent part, “analyze the data relating to the one or more meetings to determine one or more of an effectiveness of the one or more meetings and an effectiveness of a meeting participant.”

Concerning this limitation, the Examiner found Dewar discloses

data may indicate the employer’s rating of the employee’s actual job performance. Such a rating can be cross-checked against the answers that the employee gave during the application process. The cross-checking can be used as feedback to refine the questions and evaluation criteria used at each stage of the hiring process. [0108] Employee performance evaluation 406 measures actual job performance of the applicant or incumbent after holding the job for a period of time. This information is fed back to test design 402 and/or test administration 404. Test design 402 may be revised to delete questions which were not predictive of successful job performance. This can be done for example by deleting questions whose answers bore no relation to performance evaluation 406 for a statistically valid sample).

(Final Act. 33).

Appellants argue,

no reference cited by the Final Office Action discloses determining the effectiveness of a non-interview meeting. Moreover, claim 19 would not have been obvious over Dewar and a reference that discloses a simple non-interview meeting (such as Reynolds) because there is no teaching or

suggestion to make such a modification. This is not surprising, because the purpose of an interview is to evaluate a job candidate and determine whether that candidate should be hired or not. The purpose of a non-interview meeting is not to evaluate any particular person, but to make business decisions. And while it may be commonplace to later evaluate the effectiveness of those business decisions, Appellant[s] respectfully submit[] that the prior art does not teach, either alone or in combination, the evaluation of the business meeting that was used to arrive at such decisions.

(Appeal Br. 16–17).

We agree with Appellants because although the cited sections of Dewar do disclose evaluating a meeting participant (the employee being tested) the cited sections of Dewar do not disclose meetings, let alone determining the effectiveness of the one or more meetings. Independent claim 19 defines a meeting as “meetings among persons employed at a same business organization.” Dewar discloses statistical evaluations in a process of test design 402, without mention of a meeting and/or a resultant determination of the effectiveness of the meeting. *See* Dewar ¶ 108 (“Test administration 404 tests and scores job applicants and/or incumbents.”). Appellants argue and we agree that “[t]he purpose of a non-interview meeting is not to evaluate any particular person, but to make business decisions.” (Appeal Br. 17). It is not apparent and the Examiner does not make it clear how test designing and administration is an obvious variant of meeting evaluations.

Given that claims 20–22 depend from claim 19, and because we cannot sustain the rejection of claim 19, the rejection of claims 20–22, likewise, cannot be sustained.

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1–12 and 14–22 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a 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.”

Alice Corp. Pty. Ltd. v. CLS Bank Int’l, 134 S. Ct. 2347, 2355 (2014) (citations omitted) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept.

Although the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case’s claims themselves and the

Specification provide enough information to inform one as to what they are directed.

The steps in claim 1 result in “compar[ing] job candidate data for all job candidates who successfully passed all interviews, all job candidates who were rejected, and job performance data of the job candidates who were hired” to effect, determin[ing] an effectiveness of an interviewer and an effectiveness of an interview process. The steps in independent claim 19 result in, “determin[ing] one or more of an effectiveness of the one or more meetings and an effectiveness of a meeting participant.”

The Specification further states,

Many business organizations today, especially large corporations, struggle with the interviewing and hiring of job candidates. The interviewing and hiring processes are difficult, time consuming, non-automated, and many times do not result in the hiring of a candidate who will be a productive employee. As many a business manager or human resources person knows, a bad hire can be a real headache.

Specification ¶ 2.

The Specification also describes,

[a] process to schedule a meeting and select people to invite to the meeting. At **2505**, the system stores in a database data relating to a plurality of persons. The plurality of persons is normally employed at the same business organization, but the plurality can also be spread across more than one business organization or not be associated with a business organization at all.

Specification ¶ 32.

Thus, all this evidence shows that claims 1 and 19 are directed to evaluating the effectiveness of employee candidate interview and meeting processes, respectively. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972) in particular, that the claims at issue here are directed to an abstract idea. Evaluating the effectiveness of employee candidate interview and meeting processes are methods of organizing human behavior, which is not patent-eligible subject matter. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2355–56. Also, we find the steps of receiving data, storing data, comparing data and analyzing data, constitute physical acts by a human and/or “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.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). *See also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014) (holding that claims directed to certain arrangements involving contractual relations are directed to abstract ideas). Thus, evaluating the effectiveness of employee candidate interview and meeting processes are “abstract ideas” beyond the scope of § 101.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of an intermediated settlement in *Alice* and the concept of evaluating the effectiveness of employee candidate interview and meeting processes, at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. That the claims do not preempt all forms of the abstraction or may be limited to hiring interviews and meetings,

does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–61 (Fed. Cir. 2015).

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on ... a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice Corp. Pty. Ltd., 134 S. Ct. at 2358 (alterations in original) (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to take in data, compute a result, and return the result to a user amounts to electronic data query and retrieval—some of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the

industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants' method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellants' claims simply recite the concept of evaluating the effectiveness of employee candidate interview and meeting processes. The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than instructions to evaluate the effectiveness of employee candidate interview and meeting processes. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

Alice Corp. Pty. Ltd., 134 S. Ct. at 2360 (alterations in original) (citations omitted).

We have reviewed all the arguments (Appeal Br. 9–14) Appellants have submitted concerning the patent eligibility of the claims before us which stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments which have been made. But for purposes of completeness, we will address various

arguments in order to make individual rebuttals of same.

Appellants argue, “the Office Action has not come forth with any evidence to support its contention that [] the claims do not amount to significantly more than an abstract idea.” (Appeal Br. 10).

We disagree with Appellants. The notice requirement of 35 U.S.C. § 132 itself instructs, the examiner must “notify the applicant,” “stating the reasons for such rejection,” “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application.” Here, the Examiner has done exactly that, stating that “[c]laims 1–12 and 14–22 are rejected under 35 U.S.C. [§] 101 because the . . . claim(s) is/are directed to the abstract idea of meeting/interview evaluation.” (Final Act. 3).

Appellants argue,

Appellant[s] respectfully submit[] that these specifically recited functions are more than a simple abstract idea. Rather, these functions have a concrete impact on the real world, such as being able to identify interviewers who have been successful in identifying persons who have turned out to be effective employees.

(Appeal Br. 11).

We disagree with Appellants because the question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (citations omitted). In this case, claim 1 as a whole is focused on comparing

job candidate data, and claim 19 is focused on determining the effectiveness of one or more meeting.

Appellants further argue, “there are no prior systems that evaluate the effectiveness of an interviewer to identify candidates who turn out to be effective employees using the data comparison steps of Appellants’ claims. Hence, the evaluation of interviewers in the prior art was either inadequate or non-existent.” (Appeal Br. 13).

We disagree with Appellants. The question in step two of the *Alice* framework is not whether an additional feature is novel but whether the implementation of the abstract idea involves “more than [the] performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014) (quoting *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359). Other than the recited processor and storage, the remainder of the claim elements are based on human thought/activity which is not eligible subject matter under 35 U.S.C. § 101.³ “Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract.” *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017).

³ Section 101 of Title 35 U.S.C. sets out the subject matter that can be patented: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”

CONCLUSIONS OF LAW

We conclude the Examiner did err in rejecting claims 1–12 and 14–22 under 35 U.S.C. § 103(a).

We conclude the Examiner did not err in rejecting claims 1–12 and 14–22 under 35 U.S.C. § 101.

DECISION

The decision of the Examiner to reject claims 1–12 and 14–22 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED