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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH BJORN OVICK, MONICA MARISSA OVICK, and
MICHAEL HOGAN

Appeal 2016-004583
Application 14/511,869¹
Technology Center 3600

Before JOHNNY A. KUMAR, CATHERINE SHIANG,
and NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1–13 and 15–23, which are all claims pending. Claim 14 is cancelled. We have jurisdiction over the pending rejected claims under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Staffly, Incorporated, as the real party in interest. (App. Br. 3.)

THE INVENTION

Appellants' disclosed and claimed invention is directed to an on-demand temporary staffing exchange. (Abstract.)

Independent claim 1, reproduced below, is illustrative of the subject matter on appeal:

1. An electronic temporary staffing platform comprising:
 - a. a processor configured to provide an individual staff application comprising:
 - i. a database comprising a plurality of staff profiles, each staff profile associated with an individual and comprising work experience, picture, video, qualifications, billing rate, availability, and ratings by previous employers;
 - ii. a software module configured to provide an interface allowing the individual to rate employers who have previously hired them for temporary staffing assignments;
 - iii. a software module configured to provide a notification to the individual when they have been selected for a temporary staffing assignment;
 - b. a processor configured to provide an employer application comprising:
 - i. a database comprising a plurality of employer profiles, each employer profile comprising one or more descriptions of temporary staffing assignments, type of business, url, address, phone number, dress code for assignment, number of employees, owner name, supervisor, and ratings by individual staff previously employed;
 - ii. a software module configured to provide an interface allowing the employer to perform a

targeted search for individuals suitable for a current temporary staffing assignment;

- iii. a software module configured to automatically match one or more individuals to the current temporary staffing assignment based on experience, qualifications, billing rate, availability, ratings of the individual by previous employers, and ratings of previous employers by the individual;
- iv. a software module configured to provide an interface allowing the employer to immediately book a matched individual, the booking generating a notification to the individual.

REJECTION

The Examiner rejected claims 1–13 and 15–23 under 35 U.S.C. § 101 as directed to unpatentable subject matter. (Non-Final Act. 7–11.)

ISSUE ON APPEAL

Appellants' arguments in the Appeal Brief present the following issue²:

Whether the pending claims are directed to unpatentable subject matter. (App. Br. 11–20.)

² Rather than reiterate the arguments of Appellants and the positions of the Examiner, we refer to the Appeal Brief (filed Oct. 21, 2015); the Reply Brief (filed Mar. 28, 2016); the Non-Final Office Action (mailed July 22, 2015); and the Examiner's Answer (mailed Feb. 8, 2016) for the respective details.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments the Examiner erred. We disagree with Appellants' arguments, and we adopt as our own (1) the pertinent findings and reasons set forth by the Examiner in the Non-Final Office Action from which this appeal is taken (Non-Final Act. 7–11) and (2) the corresponding findings and reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 3–10). We concur with the applicable conclusions reached by the Examiner, and emphasize the following.

The Examiner concludes the pending claims are invalid under 35 U.S.C. § 101:

Here, the claims are directed booking temporary staffing assignments, a concept involving human activity relating to commercial practices. The steps of automatically match one or more individuals to the current temporary staffing assigning and conduct an audio or videos interview all describe the abstract idea.

(Non-Final Act. 9.) In addition, the Examiner concludes:

Turning to the second step outlined in *Alice*, i.e., one must determine whether the recitations in claim 1 such as “electronic staffing platform”, “processor” and “software module” relate to an inventive concept that is significantly more than the abstract idea of temporary staffing. The recitations of a computer amount to little more than reciting that the computer applies the abstract idea of temporary staffing.

(*Id.*)

Appellants rely on *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), arguing:

[T]he claimed subject matter is directed to technical tools that solves the problem of how to meet significant and unpredictable

temporary staffing needs . . . by providing a staffing platform or system that is efficient and convenient to use during the entire hiring process and specifically tailored to satisfy temporary staffing needs (e.g. needs that are commonly urgent and hard to predict which is different from traditional full time hiring processes).

(App. Br. 12.) Appellants further argue the claims do not preempt all applications of booking temporary staffing assignments across all fields.

(*Id.*) Appellants also argue the claims amount to significantly more than the alleged judicial exception, because they “define a highly technical subject matter that was not well-understood, routine, conventional, or previously engaged in by those in the field,” and “confine the invention to a particular useful application of booking temporary staffing assignments.” (App. Br. 18–19.) In addition, Appellants argue the claims recite improvements to a technical field of online staffing. (App. Br. 19–20.)

We do not find Appellants’ arguments persuasive. We adopt the Examiner’s conclusions provided in the Non-Final Office Action and Answer. (Non-Final Act. 7–11; Ans. 3–10.) 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.*, 133 S. Ct. 2107, 2116 (2013)). The “abstract ideas” category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice Corp.*, 134 S. Ct. 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. 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 there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). 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.* (brackets in original) (quoting *Mayo*, 566 U.S. at 73.) 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) (internal citation omitted.)

Appellants’ arguments focus on claim 1 — accordingly we select claim 1 as representative in evaluating whether the claims are patent-eligible under Section 101. *See* 37 C.F.R. § 41.37(c)(1)(iv). Turning to the first step of the *Alice* inquiry, we agree with the Examiner that Appellants’ claim 1 is reasonably characterized as directed to an abstract idea of “booking temporary staffing assignments.” (Non-Final Act. 9.) All the components recited in claim 1, including: (i) a data base containing staff profiles including ratings; (ii) a software interface to rate employers; (iii) a software notification module to notify selected individuals; (iv) a database containing employer profiles including ratings and assignments; (v) a software search interface; (vi) a software interface to match individuals to assignments; (vii)

a software booking module; and (viii) a software audio or video interview module, are consistent with the Examiner’s correct characterization of the “booking temporary staffing assignments” abstract idea that is the subject of the claims — which is a fundamental conventional business practice.

There is no definitive rule to determine what constitutes an “abstract idea.” Rather, the Federal Circuit has explained that “both [it] and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016); *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (explaining that, in determining whether claims are patent-eligible under § 101, “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided”). The Federal Circuit also noted that “examiners are to continue to determine if the claim recites (i.e., sets forth or describes) a concept that is similar to concepts previously found abstract by the courts.” *Amdocs*, 841 F.3d at 1294 n.2 (internal citation omitted.)

We are not persuaded *DDR Holdings*, involving subject matter which changed how interactions operated on the Internet, is applicable to the pending claims. *DDR Holdings*, 773 F.3d at 1257. The steps recited in the claims involve routine personnel data gathering of characteristics and ratings of employees, employers, and staffing assignments, searching and matching data, followed by notifications and live interviews. The subject matter of the claims can be performed either mentally or with “. . . pencil and paper.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir.

2011) (internal citation omitted.) “[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.” 654 F.3d at 1373. In this regard, the claims are similar to the claims that the Federal Circuit determined are patent ineligible in *Elec. Power Grp., LLC v. Alstom*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (collecting information and “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category”). The Federal Circuit has also held similar data manipulation claims to be directed to patent-ineligible abstract idea — see *OIP Tech., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (offer-based price optimization); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (tailoring information presented to a user based on particular information); *Digitech Image Techs., LLC v. Elecs. For Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (employing mathematical algorithms to manipulate existing information); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1346 (Fed. Cir. 2013) (generating tasks in an insurance organization); and *Versata Dev. Grp. v. SAP Am.*, 793 F.3d 1306, 1333–34 (Fed. Cir. 2015) (price-determination method involving arranging organizational and product group hierarchies).

Moreover, such “insignificant postsolution activity” as issuing notifications and conducting live interviews after data collection and analysis does not circumvent the prohibition against patenting an abstract idea. *Parker v. Flook*, 437 U.S. 584, 590 (1978); *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010).

In addition, we are unpersuaded by Appellants' argument that the claims do not threaten to create problems relating to preemption. (App. Br. 12.) Lack of complete preemption does not make the claims any less abstract. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014); *Accenture*, 728 F.3d at 1345; *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility”).

Turning to the second step of the *Alice* inquiry, we find nothing in the claims that adds anything “significantly more” to transform the abstract concept of task monitoring. *Alice*, 134 S. Ct. at 2357. Beyond that abstract idea, the claims merely recite “‘well-understood, routine, conventional activit[ies],’” either by requiring conventional computer activities or routine data-gathering steps. *Alice*, 134 S. Ct. at 2359 (quoting *Mayo*, 566 U.S. at 73.) Considered individually or taken together as an ordered combination, the claim elements fail “to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 72–73, 78.) For example, claim 1 recites processors, databases, and software modules. This is similar to the circumstances of *Alice*, where “such computer functions are ‘well-understood, routine, conventional activit[ies],’ previously known to the industry.” *Alice*, 134 S. Ct. at 2359 (quoting *Mayo*, 566 U.S. at 73); *see also buySAFE*, 765 F.3d at 1355 (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (a computer “employed only for its most basic function . . . does not impose

meaningful limits on the scope of those claims”). The broadly recited computer implementation limitations of the claims do little to limit their scope. Indeed, the Specification makes clear that the components are standard computer devices and techniques — for example, the claimed “software modules are created by techniques known to those of skill in the art using machines, software, and languages known to the art.” (Spec. ¶ 113.)

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 35 U.S.C. § 101 rejection of the pending claims.

DECISION

We affirm the Examiner’s decision rejecting claims 1–13 and 15–23.

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). *See* C.F.R. § 41.50(f).

AFFIRMED