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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MATTHEW SCOTT MALDEN  
and JOHN LUDWIG COKER

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Appeal 2016-004867  
Application 12/541,028<sup>1</sup>  
Technology Center 3600

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Before KRISTEN L. DROESCH, SCOTT B. HOWARD, and  
JOYCE CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–4, 6–13, 15, and 17–24, which are all of the claims pending in this application.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> According to Appellants, the real party in interest is Hewlett-Packard Development Company, LP. App. Br. 1.

<sup>2</sup> Claims 5, 14, and 16 have been canceled. App. Br., Claims App'x.

## INVENTION

Appellants' application relates to a method and system for internet advertising administration using a unified user interface. Spec., Abstract. Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. A method comprising:
  - receiving, by a system comprising a processor, campaign configuration data for an internet advertising campaign;
  - receiving, by the system, a selection of publisher systems to run the internet advertising campaign;
  - adjusting, by the system, the campaign configuration data according to abstraction rules, including automatic expansion of keywords into keyword variants for a plurality of match types specifying different types of keyword matching of a keyword to a search term of a search submitted to a publisher system, the automatic expansion of keywords comprising expanding a first keyword into plural different keyword variants for the respective plurality of match types;
  - providing, by the system, the adjusted campaign configuration data to the publisher systems that comprise search engines;
  - gathering, by the system, statistics associated with user interaction with advertisements displayed by the publisher systems in response to user-submitted search terms; and
  - outputting, by the system, for display in a display screen information comprising the gathered statistics.

## REJECTIONS

Claims 1–4, 6–13, 15, and 17–24 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

Claims 1–4, 6–13, 15, and 17–24 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claim 9 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claims 1–4, 10–13, 15, and 17–24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kline et al. (US 2006/0074749 A1, published Apr. 6, 2006) (“Kline”) and Dangaltchev et al. (US 2009/0112609 A1; published Apr. 30, 2009) (“Dangaltchev”).

Claim 9 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kline, Dangaltchev, and Barko Germany, Julie. *Best Practices for Political Online Advertising*, GW's Institute for Politics, Democracy & the Internet, Mar. 4, 2008, pp. 36–37 (“NPL”).

Claims 6–8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kline and Tang et al. (US 2007/0156757 A1; published July 5, 2007) (“Tang”).

#### ANALYSIS

##### *Rejection of Claims 1–4, 6–13, 15, and 17–24 under 35 U.S.C. § 101*

Appellants contend the Examiner erred in rejecting claim 1 as directed to patent-ineligible subject matter. App. Br. 7.

In *Alice*, the Supreme Court set 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.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). The first step is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* (citing *Mayo*, 566 U.S. at 77–78). If the claims are directed to a

patent-ineligible concept, the second step 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*, 566 U.S. at 79, 78). 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.* (alterations in original) (quoting *Mayo*, 566 U.S. at 72–73). 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) (citation omitted).

Turning to the first step of the *Alice* inquiry, we agree with the Examiner that limitations of the independent claims are directed to targeted advertising and brokerage of ads, and that the claims describe the concepts of comparing new information (keywords submitted to a search engine) with stored information (lists of words that are variants of keywords) and using rules (abstraction rules) to identify options (possible campaign configuration data/advertisement adjustments). Final Act. 2–3. We also agree that this is similar to the concept of comparing new and stored information and using rules to identify options, which is an abstract idea. *Id.* at 3 (citing *SmartGene Inc. v. Adv. Bio. Labs. SA*, 555 Fed. Appx. 950 (Fed. Cir. 2014)).

In *SmartGene*, the Federal Circuit found claims patent ineligible because they did “no more than call on a ‘computing device,’ with basic functionality for comparing stored and input data and rules, to do what doctors do routinely.” *SmartGene*, 555 Fed. Appx. at 954. In the instant

case, the recited “campaign configuration data” is nothing more than data used in an algorithm process that uses a system (i.e., computer) to adjust the data using mathematical comparisons and rule-based processes. The claims at issue in *SmartGene* relied upon “expert rules” for “‘evaluating and selecting’ from a stored ‘plurality of different therapeutic treatment regimens.’” *Id.* at 951–952. The “expert rules” in *SmartGene* are analogous to the “abstraction rules” used to adjust campaign configuration data in claim 1.

The steps of claim 1 are also similar to the steps that the Federal Circuit determined were patent ineligible in *Electric Power Group LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). In *Electric Power*, the method claims at issue were directed to “performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results.” *Elec. Power Grp.*, 830 F.3d at 1351–52. There, the Federal Circuit held that the claims were directed to an abstract idea because “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354.

We agree with the Examiner that, in the instant case, the claimed steps do not rely on an inventive device or technique for displaying information or new techniques for adjusting information, but rather constitute a generic recitation of steps for mathematically manipulating data to obtain modified data. *See* Ans. 3–4. No technological advance is evident in the present invention, and Appellants do not identify any problem particular to computer networks and/or the Internet that claim 1 allegedly overcomes.

Appellants argue the Examiner erred because “the § 101 rejection of claim 1 is based on an inaccurate characterization of the claim.” App. Br. 7. Appellants also argue in a conclusory manner that the claim at issue in *SmartGene* is “completely different from the claim at issue in the present case.” *Id.* Because Appellants do not persuasively explain how the Examiner mischaracterized the claim or how the claims differ from those in *SmartGene*, we are not persuaded by Appellants’ arguments.<sup>3</sup>

With regard to Appellants’ argument that “claim 1 of the present application is directed to a method that includes more than just routine steps,” Appellants point out “specific interactions between the system that performs the adjusting of campaign configuration data and publisher systems including search engines with which user interaction is made.” App. Br. 9. Appellants also argue that claim 1 requires “the display of information comprising gathered statistics associated with user interaction with advertisements displayed by the publisher systems in response to user-submitted search terms.” *Id.*

Appellants’ arguments are not persuasive at least because they are based upon elements not recited or required by the claims. Claim 1 recites “providing, by the system, the adjusted campaign configuration data to the publisher systems that comprise search engines.” Claims App’x i. Moreover, claim 1 recites “outputting, by the system, for display in a display screen information comprising the gathered statistics.” *Id.* Providing data from one system to another and outputting data for display using generic computer components are routine and well-known functions. Appellants

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<sup>3</sup> Appellants also point out that *SmartGene* is a nonprecedential decision, but present no developed argument based on that fact. *See* App. Br. 7.

have not identified any particular inventive technology for performing those functions. Here, the advance the claims purport to make is a process of gathering and analyzing information, then displaying the information, and not any particular assertedly inventive technology for performing those functions. *See, e.g., Elec. Power Grp.*, 830 F.3d at 1354.

For these reasons, we are not persuaded of error in the Examiner’s finding that the claims are directed to the abstract idea of comparing new and stored information and using rules to identify options. Final Act. 2–3; Ans. 3.

Turning to the second step of the *Alice* inquiry, we find nothing in claim 1 that adds anything “significantly more” to transform the abstract concept of comparing new and stored information and using rules to identify options into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. We are not persuaded by Appellants’ arguments that the claims recite additional elements that transform the abstract idea into a patent-eligible application because Appellants effectively identify the entirety of claim 1 as adding “significantly more,” with no persuasive explanation. *See* App. Br. 10–11.

Appellants also argue that the “additional subject matter of claim 1 is non-obvious over the cited references, and therefore is clearly inventive.” *Id.* Even if we were to conclude Appellants’ claims are nonobvious, such finding would not necessarily lead to the conclusion that subject matter is patentable eligible. *See Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2117 (2013).

Appellants further argue that “the subject matter in the various clauses of claim 1 supplies an inventive concept ‘in the physical realm of things’ that provides a ‘new and useful application’ of the claimed subject matter to



the physical realm.” App. Br. 11 (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014)). Appellants specifically argue that “the clauses of claim 1 recite an interaction between systems, including the system comprising a processor, the publishers systems comprising search engines, and a display screen, which are physical entities.” *Id.*

We are not persuaded by Appellants’ argument because Appellants have not persuasively explained how the “interaction between systems” adds something “significantly more” to transform the abstract concept of comparing new and stored information and using rules to identify options into a patent-eligible application.

Accordingly, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of independent claim 1, and claims 2–4, 6–13, 15, and 17–24, which Appellants have grouped with claim 1. *See* App. Br. 12.

*Rejection of Claims 1–4, 6–13, 15, and 17–24  
under 35 U.S.C. § 112, first paragraph*

The Examiner rejected claims 1–4, 6–13, 15, and 17–24 as failing to satisfy the written description requirement after finding no written description for the limitation “automatic expansion of keywords into keyword variants for a plurality of match types specifying different types of keyword matching of a keyword to a search term of a search submitted to a publisher system,” recited in claim 1. Final Act. 4–6.

We agree with Appellants that the Examiner erred in rejecting claim 1. *See* App. Br. 13 (citing Spec. ¶ 49). Paragraph 49 of the Specification describes expanding keywords into match-type variance by associating each keyword with one or more match types (e.g., broad match, phrase match, exact match, etc.) used by a publisher. Spec. ¶ 49. We find paragraph 49 is sufficient to convey to those skilled in the art that the inventor had

possession of the claimed subject matter as of the filing date. *See Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc).

With respect to dependent claim 24, the Examiner found that the written description requirement is not satisfied with respect to the limitation “structuring, by the system, the internet advertising campaign based on the gathered statistics,” recited in claim 24. Final Act. 4–5. Paragraph 64 of the Specification describes that the platform 116 creates and structures a campaign based on data from the statistics database 314, publisher systems 320, and third party data sources 312, and provides an example in which “the system can determine which keywords to use, which advertisements to use, how to structure ad groups, which publishers to advertise on, etc. based on experiential data.” App. Br. 14; Spec. ¶ 64. We find paragraph 64 is sufficient to convey to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date. *See Ariad*, 598 F.3d at 1351.

Accordingly, we reverse the Examiner’s rejection of claims 1 and 24 under 35 U.S.C. § 112, first paragraph. We also reverse the Examiner’s rejection of claims 2–4, 6–13, 15, and 17–23 for similar reasons.

*Rejection of Claim 9 under 35 U.S.C. § 112, second paragraph*

Appellants argue that the Examiner erred in rejecting claim 9 as indefinite because claim 9 depends from claim 1, which recites “abstraction rules.” Appellants argue that claim 1 provides antecedent support for the limitation “the abstraction rules that specify modifying a text length,” recited in claim 9.

We agree with Appellants that the Examiner erred. The Examiner has not explained in sufficient detail why the phrase recited in claim 9 renders the metes and bounds of the claim scope unclear. The Examiner also has not explained in sufficient detail whether the phrase at issue is amenable to two or more plausible claim constructions. *See Ex parte Miyazaki*, 89 USPQ2d 1207, 1211 (BPAI 2008) (precedential) (“[I]f a claim is amenable to two or more plausible claim constructions, the USPTO is justified in requiring the applicant to more precisely define the metes and bounds of the claimed invention by holding the claim . . . indefinite.”). We find that one of ordinary skill would have understood the disputed phrase in claim 9 to refer to a subset of the “abstraction rules” recited in claim 1.

Accordingly, we reverse the Examiner’s rejection of claim 9 under 35 U.S.C. § 112, second paragraph.

*Rejection of Claims 1–4, 6–13, 15, and 17–24 under 35 U.S.C. § 103(a)*

In rejecting claim 1, the Examiner found that Kline teaches or suggests all of the recited limitations, except “for a plurality of match types specifying different types of keyword matching,” for which the Examiner relied on Dangaltchev. Final Act. 10.

Appellants contend the cited portions of Dangaltchev do not teach expanding a keyword into plural different keyword variants for respective plurality of match types, as claim 1 requires. App. Br. 19. Appellants argue that associating a bid with one or more of three match types, as Dangaltchev teaches, “does not involve automatic expansion of a keyword into plural different keyword variants for the respective plurality of match types.” *Id.* (citing Dangaltchev ¶¶ 7, 17).

Appellants' arguments do not persuade us of Examiner error. Appellants attack the prior art references individually even though the Examiner relies on the combination of Kline and Dangaltchev as teaching or suggesting the disputed features. Final Act. 7–11; Ans. 12–13; *see also In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)) (“The test for obviousness . . . is what the combined teachings of the references would have suggested to those having ordinary skill in the art.”). The Examiner found that Kline teaches “expanding a keyword into plural different keyword variants” and a method of generating tables of keywords (keyword variants) for the purpose of matching them to a search term of a search query submitted to a publisher system such as a search engine. Ans. 12–13 (citing Kline ¶ 66). The Examiner further found that Dangaltchev teaches or suggests that the matching of keywords may be based on specific types of matching which specify either “exact,” “phrase,” or “broad” matching). Final Act. 10–11 (citing Dangaltchev ¶¶ 7, 17, 24).

Appellants have not persuasively explained why the combined teachings cited by the Examiner would not have suggested the disputed limitation to an artisan of ordinary skill. *See Reply Br.* 18. Instead, Appellants explain what results the combination of Kline and Dangaltchev would have “led to.” *Id.* Because Appellants have not persuasively addressed whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the combined teachings of those references, Appellants have not persuasively rebutted the Examiner’s findings.

Appellants next argue that a person of ordinary skill in the art would not have found a reason to incorporate the subject matter of Dangaltchev

into the arrangement of Kline. App. Br. 20. Appellants contend that a category as taught in Kline is not a match type, and relating keyword groups to categories, as performed in Kline, is completely unrelated to what occurs in Dangaltchev. *Id.* We disagree. The Examiner provides “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); *see* Final Act. 11; Ans. 13–14. Appellants’ arguments rebutting the Examiner’s findings and conclusion of law are not supported by objective evidence of record. It is well settled that attorney argument, unsupported by factual evidence, is entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (attorney argument is not evidence).

For these reasons, we are not persuaded that the Examiner erred in finding that the combination of Kline and Dangaltchev teaches or suggests the disputed limitations of claim 1.

Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of independent claim 1, as well as the 35 U.S.C. § 103(a) rejection of independent claims 19 and 20, which Appellants argue are patentable for similar reasons. App. Br. 20. We also sustain the Examiner’s rejection of dependent claims 2–4, 6–13, 15, 17, 18, and 21–24, for which Appellants make no separate arguments for patentability. *Id.*

## DECISION

We affirm the decision of the Examiner rejecting claims 1–4, 6–13, 15, and 17–24 under 35 U.S.C. § 101.

We affirm the decision of the Examiner rejecting claims 1–4, 6–13, 15, and 17–24 under 35 U.S.C. § 103(a).

We reverse the decision of the Examiner rejecting claims 1–4, 6–13, 15, and 17–24 under 35 U.S.C. § 112, first paragraph.

We reverse the decision of the Examiner rejecting claim 9 under 35 U.S.C. § 112, second paragraph.

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner’s decision rejecting claims 1–4, 6–13, 15, and 17–24 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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