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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY JENSEN BOSS, RICK ALLEN HAMILTON II,
JACQUELYN ANNETTE MARTINO, CLIFFORD ALAN PICKOVER,
and ANNE R. SAND

Appeal 2016-004868
Application 12/578,627
Technology Center 3600

Before PHILIP J. HOFFMANN, CYNTHIA L. MURPHY, and
AMEE A. SHAH, *Administrative Patent Judges*

SHAH, *Administrative Patent Judge*.

DECISION ON APPEAL¹

The Appellants² appeal under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 1–3, 5–10, 12–14, 16, 17, and 21–26, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Throughout this opinion, we refer to the Appellants’ Appeal Brief (“Appeal Br.,” filed Oct. 13, 2015), Reply Brief (“Reply Br.,” filed Apr. 4, 2016), and Specification (“Spec.,” filed Oct. 14, 2009), and to the Examiner’s Answer (“Ans.,” mailed Feb. 4, 2016) and Final Office Action (“Final Act.,” mailed May 14, 2015).

² According to the Appellants, the real party in interest is International Business Machines Corporation. Appeal Br. 1.

STATEMENT OF THE CASE

The Appellants' invention relates generally to "a data processing method and system for providing a location preference in a routing algorithm, and more particularly to technique for determining travel routes that take into account fee-based preferential weighting of locations." Spec. ¶ 1.

Claims 1, 12, and 23 are the independent claims on appeal. Claim 1 (Appeal Br. 42–44) (Claims App.) is illustrative of the subject matter on appeal, and is reproduced below (with added bracketing for reference):

1. A computer-implemented method of determining a route that includes a location according to a first fee charged to an entity associated with the location, said method comprising the steps of:

[(a)] a computer system receiving locations of a plurality of vendors;

[(b)] the computer system presenting to a vendor included in said plurality of vendors a sliding scale of fees including a first fee for assigning to a location of said vendor a first preferential weight indicating a first likelihood of selecting said location of said vendor from said locations of said plurality of vendors so that said location is included along a requested route, and further including a second fee for assigning to said location of said vendor a second preferential weight indicating a second likelihood of selecting said location of said vendor from said locations of said plurality of vendors so that said location is included along said requested route, said first fee being greater than said second fee and said first likelihood being greater than said second likelihood;

[(c)] the computer system receiving from said vendor said first fee instead of said second fee, and in response to said receiving said first fee and instead of assigning to said location of said vendor said second preferential weight, the computer system assigning to said location of said vendor said first

preferential weight indicating said first likelihood of selecting said location of said vendor so that said location is included along said requested route;

[(d)] the computer system receiving a request from a user of a global positioning system (GPS) for a determination of a route from a first point to a second point, said GPS coupled to said computer system via a computer network;

[(e)] based on said first fee instead of said second fee being received from said vendor, based on said first preferential weight instead of said second preferential weight being assigned to said location of said vendor, based on said first likelihood being greater than said second likelihood, and based on said received request for said determination of said route, the computer system selecting said location of said vendor from said locations;

[(f)] in response to said step of selecting said location of said vendor based on (1) said first fee instead of said second fee being received from said vendor, (2) said first preferential weight instead of said second preferential weight being assigned to said location of said vendor, (3) said first likelihood being greater than said second likelihood, and (4) said received request for said determination of said route, the computer system determining said route so that an address of said location of said vendor is on said route, said location not being said first point or said second point;

[(g)] subsequent to said step of determining said route so that said address of said location of said vendor is on said route, the computer system instructing said GPS to present said route to said user; and

[(h)] in response to said step of instructing said GPS to present said route to said user, the GPS presenting said determined route to said user as a recommended route providing a value to said vendor.

REJECTIONS

Claims 1–3, 5–10, 12–14, 16, 17, and 21–26 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1, 2, 7–9, 12, 13, 21–24, and 26 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Huang et al. (US 2007/0061057 A1, pub. Mar. 15, 2007) (“Huang”).

Claims 3, 14, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huang and Feng (US 2010/0268449 A1, pub. Oct. 21, 2010).

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Huang and Rosenblatt et al. (US 2010/0082491 A1, pub. Apr. 1, 2010) (“Rosenblatt”).

ANALYSIS

Patent-Ineligible Subject Matter - § 101

The Appellants argue claims 1–3, 5–10, 12–14, 16, 17, and 21–26 as a group. *See* Appeal Br. 9; *see also id.* at 24 (relying on the arguments presented for the independent claims). We select claim 1 as representative of the group, with claims 2, 3, 5–10, 12–14, 16, 17, and 21–26 standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws 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 *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 78–79 (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*, 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.* (citing *Mayo*, 566 U.S. at 79) (emphasis added). If so, the second step is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘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.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology, or are instead directed to a result or effect that itself is the abstract idea, and merely invoke generic processes and machinery, *i.e.*, “whether the focus of the claims is on [a] specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a

tool.” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

Under the first step of the *Alice* framework, the Examiner determines that the claims are directed to delivering a vendor location, i.e., an advertisement, to a user in the form of a map, based on a fee. *See* Final Act. 3; *see also* Ans. 2–3. Conversely, the Appellants contend that the claims are directed to “determining a route by which a location of a vendor is included in the route based on a preferential weighting of the location.” Appeal Br. 12–13; *see also* Reply Br. 2–3.

Before determining whether the claims at issue are directed to an abstract idea, we must first determine what the claims are directed to.

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon—after all, they take place in the physical world. *See Mayo*, 132 S. Ct. at 1293 (“For all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.”) Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015); *see Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1375, 2016 WL 1393573, at *5 (Fed. Cir. 2016) (inquiring into “the focus of the claimed advance over the prior art”).

Enfish, 822 F.3d at 1335.

The step-one analysis requires us to consider the claims “in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). 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) (citing *Enfish*, 822 F.3d at 1336).

In this case, the preamble of claim 1 provides for a “method of determining a route that includes a location according to a first fee charged to an entity associated with the location.” Appeal Br. 42 (Claims App.). Claim 1 recites the limitations of receiving vendor location data, presenting fee data to a vendor, receiving fee data from the vendor, assigning a weight based on that data, receiving a request for a route from a user, selecting vendor location data based on fee, weight, and request data, determining a route based on the selected location data, and presenting the route data to the user. *See id.* The Specification states that the invention relates to “determining travel routes that take into account fee-based preferential weighting of locations” (Spec. ¶ 1), and “[e]mbodiments of the present invention provide location preference in routing algorithms” (*id.* ¶ 18). Figure 2, to which the Appellants refer to as a summary of the claimed subject matter (Appeal Br. 2–3), depicts a flowchart for determining a travel route that includes a location “according to a fee charged to an entity associated with the location” (Spec. ¶ 13). In that context, the claim is directed to determining and providing a route that includes a location according to a fee paid by the vendor.³

³ We note that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240

Determining and providing a route that includes a location according to a fee paid is similar to claims found to be abstract ideas by our reviewing court. For example, in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016), the court held that collecting and analyzing information and displaying results of the analysis is an abstract idea. The court similarly held that claims directed to collecting, analyzing, manipulating, and processing data and displaying the results of the analysis, manipulation, and processing are directed to an abstract idea. *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (collecting, displaying, and manipulating data); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) (customizing web page content based on particular characteristics). Other courts, following Federal Circuit precedent, have similarly found claims directed to collecting, organizing, and providing navigation information to be abstract ideas. *See Peschke Map Techs. LLC v. Rouse Properties Inc.*, 168 F. Supp. 3d 881, 887 (E.D. Va. 2016) (an electronic map navigation system that enables a user to locate a particular store provided a link to information); *Location Based Servs., LLC v. Niantic, Inc.*, No. 17-CV-04413 NC, 2017 WL 6497636, at *8 (N.D. Cal. Dec. 19, 2017) (“representing information about specific locations on a map, and displaying the information on the map in accordance with a user request”); *Move, Inc. v. Real Estate All. Ltd.*, 221 F. Supp. 3d 1149, 1162 (C.D. Cal. 2016) (“method for collecting and organizing information about available real estate properties and displaying this information on a digital map that

(Fed. Cir. 2016). The Board’s “slight revision of its abstract idea analysis does not impact the patentability analysis.” *Id.* at 1241.

can be manipulated by the user”). Here, claim 1 involves nothing more than receiving, presenting, and determining data of a route using criteria including fees, weighted data, and user input, without any implementation details, technical description, or particular inventive technology — an abstract idea. *See Elec. Power Grp.*, 830 F.3d at 1354.

We find unpersuasive of Examiner error the Appellants’ argument that the Examiner has not established a prima facie case because the Examiner “provided no rationale for determining that the claims are directed to an abstract idea.” Appeal Br. 13; *see also id.* at 12. In rejecting the pending claims under § 101, the Examiner analyzes the claims using the *Mayo/Alice* two-step framework, and clearly articulates the reasons why the claimed invention is directed to a judicial exception, namely an abstract idea. *See* Final Act. 3; Ans. 2–5. Further, we are aware of no controlling authority that requires the Examiner to provide “supporting evidence” (Appeal Br. 13; *see also* Reply Br. 4) to support a determination that a claim is directed to an abstract idea. *See Alice*, 134 S. Ct. at 2355–57. Nor, contrary to the Appellants’ assertion (Appeal Br. 12–13), did this Board hold, in *Ex parte Renald Poisson*, Appeal 2012-011084 (PTAB Feb. 27, 2015), that there is any such requirement when, as here, the claimed concept is comparable to similar concepts previously found abstract by our controlling court.⁴ *See Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“Instead of a definition [for what an ‘abstract idea’ encompasses], then, the decisional mechanism courts now apply is to

⁴ In any event, we would not be bound by this non-precedential decision.

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 has held that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original) (quoting 35 U.S.C. § 132). Here we find that the Examiner has set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132 as to why the claims are patent-ineligible. *Id.*; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (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”).

Under the second step in the *Alice* framework, we adopt and find supported the Examiner’s determination that the claim limitations, taken individually or as an ordered combination, do not recite an inventive concept. *See* Final Act. 3; Ans. 3–5. We are unpersuaded by the Appellants’ arguments that the claims “recite significantly more than the abstract idea.” Appeal Br. 15; *see also id.* at 16–24; Reply Br. 5–8.

We find unpersuasive the Appellants’ argument that the claim recites limitations to effect an improvement to the “technology of global positioning systems.” Appeal Br. 15; *see also id.* at 16–17; Reply Br. 6–7. Determining a route and instructing a “GPS” to present it to the user is not a technological improvement in global positioning systems. The steps of receiving location

data, presenting fee data, assigning weights to fee data, receiving fee selection data, receiving user input data, determining a route based on the data user input, fee selection, and likelihood data, and instructing the GPS to display the route are basic, purely conventional functions of a GPS's processor. *See Alice*, 134 S. Ct. at 2359; *Enfish*, 822 F.3d. at 1336 (focusing on whether the claim is “an improvement to [the] computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity”). The Specification supports this view. For example, the Specification provides for a system comprising a generic central computer system, vendor computers, network, calculation service, and GPS for performing the functions. *See Spec.* ¶ 19, Fig. 1. The Specification further provides that the central computer system comprises a generic central processing unit (“CPU”), memory, input/output interface, and bus. *Id.* ¶¶ 52–57, Figs. 1, 6. The CPU can be a single or multiple processing units in one or more locations and can be the GPS. *Id.* Receiving and presenting data, evaluating the data in determining a route, and presenting the results of that evaluation as a route do not require a nonconventional processor/GPS. *See Elec. Power Grp.*, 830 F.3d at 1355. The processor/GPS itself is not technologically improved. The Appellants do not explain how the process improves any technological aspect of the GPS, as opposed to the existing functionality of determining and presenting a route. The steps of receiving and presenting data, determining a route based on that data, and instructing a GPS to display the route do not effect a *technological* improvement to the GPS, but a business/commercial improvement in providing a “non-optimal route” (Appeal Br. 16) so that vendors who paid a fee can be shown or advertised.

We also find unpersuasive the Appellants' argument that the feature of the GPS to present the route "cannot be implemented with a generic computer alone and requires a global positioning system which has a special purpose of calculating geographic locations. Thus, the recited 'GPS' in Appellants' claims is a special purpose device that on its face is different from a generic computer." Appeal Br. 18. Rather, we agree with the Examiner that a "general purpose GPS device" (i.e., a device having a global positioning system for the "purpose of calculating geographic locations" is a "conventional" computing device (Ans. 4), and the Specification likewise conveys the conventionality of such a computing device (*see, e.g.*, Spec. ¶ 2). We are not persuaded by the Appellants' position that presenting a route is not routine, well-understood, and conventional to a generic GPS, as provided for in the Specification. *See* Spec. ¶¶ 19, 52, 58. Further, the claim is not eligible under § 101 because it has "a special purpose device." A general GPS programmed to perform the conventional function of displaying does not amount to an inventive concept such that the claim is significantly more than the abstract idea. *See EON Corp. IP Holdings LLC v. AT & T Mobility LLC*, 785 F.3d 616, 623 (Fed. Cir. 2015) ("A microprocessor or general purpose computer lends sufficient structure only to basic functions of a microprocessor."); *Alice*, 134 S. Ct. at 2357–60 (Applying an abstract idea, such as an algorithm, on a general purpose computer is not enough to transform a patent-ineligible abstract idea into a patent-eligible invention.).

We further find unpersuasive the Appellants' arguments that the claim is significantly more than the abstract idea because it "includes recitations at a **level of specificity**," and not at a "high level of generality" (Appeal

Br. 18–19; *see also* Reply Br. 7–8) and “narrow[s] the scope of the claims” (Appeal Br. 23). The limitations, even if specific, merely elaborate on the abstract idea using generic technology to perform routine, conventional, and well-understood functions of receiving and presenting data, evaluating the data in determining a route, and instructing and presenting by a device the results of that evaluation as a route.

We are also not persuaded of Examiner error by the Appellants’ argument that the claim recites an inventive concept because it “do[es] not pre-empt significant inventive activity in the field of determining a route.” Appeal Br. 19 (emphases omitted); *see also id.* at 20–24. Although the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption,” *see Alice*, 134 S. Ct. at 2354, characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354). Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.* The aforementioned concept is not sufficiently limiting so as to fall clearly on the side of patent-eligibility. Moreover, as noted above, 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*, 837 F.3d at 1314. Here, the claims recite receiving and presenting data, evaluating the data in determining a route, and presenting the results of that evaluation as a route, without focus on a specific means or method that improves the relevant technology.

Thus, we are not persuaded that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 101, and we sustain the Examiner’s rejection of claim 1 and of claims 2, 3, 5–10, 12–14, 16, 17, and 21–26, which fall with claim 1.

Anticipation - § 102

We agree with the Appellants’ contention that the Examiner’s rejection of independent claims 1, 12, and 23 is in error because Huang does disclose determining a route with the selected location on the route and not the first or second end points of the route, as recited in limitation (f) of claim 1 and similarly recited in claims 12 and 23. *See* Appeal Br. 25, 30–33; *see also* Reply Br. 13–16.

The Examiner cites to Huang’s paragraphs 30, 32, 33, and 38 as disclosing the limitation. Final Act. 6–8; Ans. 9–10. Huang discloses a method and system for delivering advertisements on a mobile device by providing map data, interpreting data provided by sensors, receiving advertising data, and determining presentation slot availability, and presenting selected advertisements. *See* Huang, Abstract. The cited paragraphs of Huang disclose that coupons, i.e., advertising data, may be received from a plurality of service stations, i.e., vendors, and based on the amount each vendor offers to pay, the vendor and driver locations, and driver preference, i.e. likelihood, the ad management module may choose to

present that vendor's advertisement. *See id.* ¶¶ 30, 32. The ad management module transmits and instructs the presentation device to present the selected coupon/ad. *Id.* ¶ 30. A navigation support module provides a navigation map and plan, i.e., a route, and may also provide vendor information. *Id.* ¶ 33. Although Huang discloses determining, selecting, and presenting the advertisement/coupon based on the fee received, vendor and driver location, and preferences, we do not see where or how Huang discloses determining the route based on the selected coupon.

The Examiner appears to find that Huang is capable of and thus inherently discloses determining the route using this criteria. *See* Final Act. 6–7; Ans. 10 (citing Huang ¶ 32)). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citation omitted). Huang at paragraph 32 discloses receiving vehicle location data, using detected transaction events for billing purposes, and using context information for targeted advertising. We do not see, and the Examiner does not adequately explain, where Huang discloses that or how the navigation plan, i.e., route is determined, much less by what criteria.

Based on the foregoing, we do not sustain the Examiner's rejection of independent claims 1, 12, and 23 and dependent claims 2, 7–9, 13, 21, 22, 24, and 26 under 35 U.S.C. § 102.

Obviousness - § 103

The rejections of claims 3, 10, 14, and 25 based on Huang in combination with Feng or Rosenblatt rely on the same inadequately supported findings and reasoning discussed above with regard to

independent claims 1, 12, and 23. The Examiner relies on Huang, and does not explain how Feng or Rosenblatt cures the deficiencies of Huang in determining the route based on the claimed criteria. Thus, we do not sustain the Examiner's rejections under 35 U.S.C. § 103(a) of claims 3, 10, 14, and 25.

DECISION

The Examiner's rejection of claims 1–3, 5–10, 12–14, 16, 17, and 21–26 under 35 U.S.C. § 101 is AFFIRMED.

The Examiner's rejection of claims 1, 2, 7–9, 12, 13, 21–24, and 26 under 35 U.S.C. § 102(e) is REVERSED.

The Examiner's rejections of claims 3, 10, 14, and 25 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED