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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEREMY LAPPIN, CHRISTOPHER BENSKEY,
MARK HOHMANN, and JERRY AUBIN

Appeal 2016-005181¹
Application 12/125,005²
Technology Center 3600

Before JAMES A. WORTH, BRADLEY B. BAYAT, and
TARA L. HUTCHINGS, *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 8, 11–13, 15, 16, 20–23, and 27–33. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed July 28, 2015) and Reply Brief (“Reply Br.,” filed Apr. 22, 2016), and the Examiner’s Answer (“Ans.,” mailed Feb. 23, 2016), Advisory Action (“Adv. Act.,” mailed Mar. 4, 2015), and Final Office Action (“Final Act.,” mailed Dec. 24, 2014).

² Appellants identify BountyJobs, Inc. as the real party in interest. App. Br. 2.

We AFFIRM.

CLAIMED INVENTION

Claim 8, reproduced below, is the sole independent claim on appeal, and is representative of the claimed subject matter:

8. A method to facilitate communication between a plurality of co-workers of a company with an available position and a plurality of recruiters, the method comprising:

the following steps performed by a server coupled to the plurality of coworkers through a company user interface:

a) receiving administrative privilege assignments for a plurality of coworkers from a first co-worker;

b) assigning administrative privileges to the plurality of co-workers;

c) receiving the available position information from the co-worker; and,

d) receiving a bounty offer for a recruiter that submits information about a candidate that fills the available position from the co-worker;

the following steps performed by the server coupled to the plurality of recruiters through a recruiter user interface:

e) receiving administrative privilege assignments for a plurality of recruiters;

f) assigning administrative privileges to the plurality of recruiters;

g) displaying the available position information to the plurality of recruiters;

h) displaying the bounty offer for a recruiter that submits information about a candidate that fills the available position; and,

the following steps performed by the server:

i) receiving a selection from a second co-worker for a recruiter status of a first recruiter, the recruiter status operable in two modes:

- an active mode, further including the steps of:

j) receiving a submission permission assignment to the

first recruiter by the second co-worker, wherein the first recruiter has permission to submit candidate information;

- k) receiving candidate information for the available position of the company from a first recruiter; and
- a blocked mode, further including the step of preventing candidate information submission from the first recruiter;
- l) displaying the received candidate information to the plurality of coworkers through the company user interface;
- m) receiving a candidate selection by a second co-worker;
- n) receiving a first payment amount of at least the bounty offer from the company; and
- o) transferring a second payment amount less than the first payment amount to a second recruiter; and
- p) updating and displaying a company news feed or a recruiter news feed upon actions of steps (c) and (d), wherein the company news feed displays time stamped activities of the plurality of recruiters and wherein the recruiter news feed displays time stamped activities of the plurality of co-workers, and includes the available position information and the bounty offer.

REJECTION³

Claims 8, 11–13, 15, 16, 20–23, and 27–33 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

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: “[I]aws of nature, natural phenomena, and

³ We treat the double patenting rejection as withdrawn, in light of the Terminal Disclaimer filed on July 23, 2015.

abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

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*, 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.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

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. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

In rejecting the claims under § 101, the Examiner determines that the claims are directed to “bounty-based employment recruiting and communication between workers of a company with an available position

and recruiters.” Final Act. 8. The Examiner determines that the claims recite an abstract idea because employing recruiters to find candidates for a position is a longstanding business practice, and also because recruiting and communicating can be carried out by manual human activity. Final Act. 8. The Examiner finds that the additional elements, taken alone or in combination do not offer significantly more than the abstract idea itself. *Id.* at 9. Instead, the elements or combination of elements amount to no more than mere instructions to implement the idea on a computer, and/or recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry. *Id.*

Here, the Specification describes a need felt by companies “to quickly fill an available position” that is often met using recruiters. Spec. ¶ 3. A known problem with using recruiters, however, “is that companies are often inundated with information about candidates that are not qualified” and many recruiters are inexperienced or lack the appropriate skills for attracting talent. *Id.* ¶ 4. As a result, companies spend “substantial time and resources in the evaluation and eventual rejection of prospective candidates.” *Id.* The Specification describes “a need in the e-commerce field to create an improved system and method for facilitating engagement and communication between an enterprise with multiple available positions and multiple recruiters in the e-commerce field.” *Id.* Appellants’ solution is “performed by a server” in claim 8, and recites steps (a) through (p) in “[a] method to facilitate communication between a plurality of co-workers with an available position and a plurality of recruiters.” *See Claim 8 supra.*

We agree with the Examiner that the focus of the claim is not on an improvement to technology (e.g., computer networking technology, communications technology or any other technical field) (*see* Ans. 6), but instead on implementation of the abstract idea using existing computers as tools to perform particular tasks, i.e., “bounty-based employment recruiting, and communication between workers of a company with an available position and recruiters,” in a particular technological environment including servers and user interfaces, which is not enough for patent-eligibility.

We are not persuaded by Appellants’ argument that the claims are akin the patent-eligible claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). App. Br. 10–11; *see also* Reply Br. 2–3. Specifically, Appellants charge that the claims are analogous to those in *DDR Holdings* because the claims “do not simply apply a known business practice from the pre-Internet world to computers or the Internet.” *Id.* at 10. Appellants assert that because the claims require a computer and a user interface, they are “necessarily rooted in computer technology.” *Id.* at 11.

However, the court in *DDR Holdings* did not conclude that the claims were patent-eligible merely because the claims did not recite the performance of a business practice known from the pre-Internet world along with the requirement to perform it on the Internet nor because the claims required the use of computers and a user interface. Instead, the claims at issue in *DDR Holdings* changed the routine, conventional functioning of Internet hyperlink protocol to direct a user of a host website to a “store within a store” on the host website, rather than to an advertiser’s third-party website, when the user clicks an advertisement. *See DDR Holdings*, 773 F.3d at 1257–58. The court determined that the invention was “necessarily

rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” and that the claimed invention did not simply use the Internet to perform an abstract business practice with insignificant added activity. *Id.*

The Federal Circuit in *DDR Holdings* “caution[ed] . . . that not all claims purporting to address Internet-centric challenges” are patent eligible, distinguishing the patent-ineligible claims of *Ultramercial*. *Id.* at 1258 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014)). In *Ultramercial* the Federal Circuit rejected the argument that claims “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before” were patent-eligible. *Ultramercial*, 772 F.3d at 714. Instead, the Federal Circuit determined that the claims were patent-ineligible because they “broadly and generically claim ‘use of the Internet’ to perform an abstract business practice (with insignificant added activity).” *DDR Holdings*, 773 F.3d at 1258. Here, as described in more detail below, the claims are more akin the patent-ineligible claims of *Ultramercial*.

Unlike the situation in *DDR Holdings*, the problem identified by Appellants relates to addressing shortcomings in recruiting, which is not a problem peculiar to computer networks or technology. Moreover, we find nothing in the Specification, nor do Appellants point us to anything in the Specification, to indicate that the particular operations recited in the claims are an improvement to any technology as opposed to an improvement in a conventional business practice, i.e., recruiting and communications surrounding the same. For example, there is no indication that the claims invoke any assertedly inventive programming, or that the claimed invention

is implemented using other than generic computer components to perform generic computer functions.

Like the situation in *Ultramercial*, claim 8 broadly and generically claims communications between a server and user interface to perform the abstract process of recruiting. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”). Claim 8 also recites limitations related to receiving and assigning administrative privileges for coworkers and recruiters. Yet, there is no indication here that limitations related to administrative privileges are more than routine, additional activity. *See Ultramercial*, 772 F.3d at 715–16 (holding “routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet” insufficient to render patent eligibility).

We are not persuaded by Appellants’ argument that claim 8 recites significantly more than an abstract idea under step two of the *Alice* analysis. *See* App. Br. 12–13; *see also* Reply Br. 3–5. In this regard, Appellants argue that a user interface enables recruiters to receive information and submit information about a candidate, thereby “significantly improv[ing] the performance of receiving a bounty offer” App. Br. 12. Appellants contend that the server enables administrative privileges to be received and assigned, and a bounty offer to be displayed, thereby “add[ing] significantly more in that they significantly improve the process and functionality so as to display a bounty offer for a recruiter that submits information about a candidate.” *Id.* at 12–13. Finally, Appellants assert that the recitation of an active mode and block mode improves “the speed in which this process can

occur.” *Id.* at 13. Yet, these improvements, as described by Appellants, do not identify any improvement to communications technology or some other technology. Instead, they relate to an improvement to the abstract idea itself through its implementation in a particular technological environment.

Appellants do not identify, and we do not find, any indication in the Specification that the claimed graphical user interface and server are more than generic components performing normal, expected, and routine functions. Indeed, the Specification provides that the user interface may be “any [] combination of hardware and/or software that is adapted to perform machine executable instructions according to the method of the preferred embodiment.” Spec. ¶ 15. Likewise, it describes the server in terms of its ability to perform the functional recitations of the claim. *See id.* ¶ 17. “[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *See DDR Holdings*, 773 F.3d at 1256.

In addition, the claim language does not recite what is allegedly inventive about the active mode and block mode or how the modes are accomplished. *See Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 912 (Fed. Cir. 2017) (holding “claim language [that] does not provide any specific showing of what is inventive about the [limitations in question] or about the technology used to generate and process it” does not satisfy *Alice*’s second step.). And, Appellants do not provide, and we do not find, any implementation details in the claim language or Specification for the active and block modes. Instead, these features are described functionally without any inventive technology. *See, e.g.*, Spec. ¶¶ 35, 38, 55, 58.

Finally, we also are not persuaded of Examiner error by Appellants' argument that the claims "do not risk preempting all future inventions related to recruiter involved hiring of a candidate." App. Br. 13–14. The Supreme Court has cautioned that "the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [the abstract idea] to a particular technological environment." *Alice*, 134 S. Ct. at 2358. Although the Court has described "the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption," *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). "[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility." *Id.*

We have reviewed the additional recitations of the dependent claims and determine that they are directed to the same abstract idea of recruiting candidates, based on conventional technology. We are not persuaded, on the present record, that the Examiner erred in rejecting claim 8 or its dependent claims under 35 U.S.C. § 101. Therefore, we sustain the Examiner's rejection.

DECISION

The Examiner's rejection of claims 8, 11–13, 15, 16, 20–23, and 27–33 under 35 U.S.C. § 101 is affirmed.

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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