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OHLANDT, GREELEY, RUGGIERO & PERLE, LLP
ONE LANDMARK SQUARE, 10TH FLOOR
STAMFORD, CT 06901

EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY M. STIBEL, AARON STIBEL, JEREMY LOEB, JUDITH GENTILE HACKETT, and MOUJAN KAZERANI

Appeal 2016-005234
Application 13/251,835
Technology Center 3600

Before BIBHU R. MOHANTY, JAMES A. WORTH, and ALYSSA A. FINAMORE, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 2, 4, 6–11, 14–20, 22, and 30–34 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to methods and systems for generating credibility scoring and reporting (Spec., para. 9). Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A computer-implemented method for producing a credibility score to quantifiably represent reputation of a particular business, the computer-implemented method performed by a credibility scoring system comprising at least one server with a microprocessor and a non-transitory computer readable medium, the computer-implemented method comprising:
>
> aggregating from a plurality of data sources to the non-transitory computer readable medium, (i) qualitative data, each qualitative data instance from the qualitative data having a textual statement with at least a first word connoting a degree of positivity or negativity and a second word that is modified by the first word and that is directed to some operational aspect of the particular business and (ii) quantitative data having a quantitative measure quantifiably rating some operational aspect of the particular business;
>
> processing, by operation of the microprocessor, the qualitative data, wherein processing the qualitative data comprises (i) assigning a weight to each particular qualitative data instance based on a frequency with which the second word of the particular qualitative data instance appears in all instances of the qualitative data, and (ii) deriving a set of quantitative measures quantifiably rating reputation of the particular business based on positivity or negativity of the first word and a weight assigned to the second word expressed in a same textual statement of each qualitative data instance;
>
> normalizing, by operation of the microprocessor, the set of quantitative measures derived from the qualitative data and the quantitative measures from the quantitative data; and
>
> producing at the credibility scoring system, a credibility score quantifying reputation of the particular business based on

normalized quantitative measures of the qualitative data and the quantitative data.

THE REJECTION

The following rejection is before us for review:

Claims 1, 2, 4, 6–11, 14–20, 22, and 30–34 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence.[1]

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellants argue that the rejection of claim 1 is improper because the claim is not directed to an abstract idea (App. Br. 8–15; Reply Br. 2–12). The Appellants argue that the claim is not directed to a fundamental economic practice or mathematical formula and instead recites unconventional steps that confine the claim to a particular application and effectuate a transformation (App. Br. 8–16; Reply Br. 2–12). The Appellants also argue that the claim is rooted in technology and improves the functioning of the computer (App. Br. 17–21).

[1] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

In contrast, the Examiner has determined that the rejection of record is proper (Final Rej. 8–12; Ans. 2–12).

We agree with the Examiner. 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: "laws of nature, natural phenomena, and abstract ideas" are not patentable. *See, e.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–79 (2012)). In accordance with that framework, we first determine whether the claim is "directed to" a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* This is a search for an "inventive concept" an element or combination of elements sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.* The Court also stated that "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *Id.* at 2358.

Here, we determine that the claim is directed to the concept of taking data to determine a creditability score for businesses. This is a fundamental economic practice long prevalent in our system of commerce and directed to using a mathematical formula and is an abstract idea beyond the scope of

§ 101. The Specification at paragraph 8 states that the invention is directed to generating "a standardized score that quantifiably measures business credibility." The preamble indicates that the claim is directed to a "method for producing a credibility score to quantifiably represent reputation of a particular business."

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. The Specification at paragraphs 104–11 describes using conventional computer equipment in the method and system. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

We note the point about preemption (App. Br. 10). While preemption "'might tend to impede innovation more than it would tend to promote it,' thereby thwarting the primary object of the patent laws," (*Alice*, 134 S. Ct. at 2354 (quoting *Mayo*, 566 U.S. at 70)), "the absence of complete preemption does not demonstrate patent eligibility" (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). *See also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir.), *cert. denied*, 136 S. Ct. 701 (2015) ("[T]hat the claims do not preempt all price

optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.").

For these above reasons the rejection of claim 1, and its dependent claims which were not argued separately, is sustained.

We reach the same conclusion as to independent system claim 14 and its dependent claims. Here, as in *Alice*, "the system claims are no different in substance from the method claims. 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." *Alice*, 134 S. Ct. at 2351. "[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." *Id.* at 2358 (quoting *Mayo*, 566 U.S. at 72).

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 2, 4, 6–11, 14–20, 22, and 30–34 under 35 U.S.C. § 101.

DECISION

The Examiner's rejection of claims 1, 2, 4, 6–11, 14–20, 22, and 30–34 is sustained.

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