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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/176,046	02/08/2014	Todd M. Martin	TMM.0003-01000	1074

107947 7590 07/02/2018

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ART UNIT	PAPER NUMBER
3689	

NOTIFICATION DATE	DELIVERY MODE
07/02/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TODD M. MARTIN

Appeal 2016-005482
Application 14/176,046
Technology Center 3600

Before JOSEPH L. DIXON, JEREMY J. CURCURI, and CHARLES J. BOUDREAU, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims 8, 10–15, and 21–30. Claims 1–7, 9, and 16–20 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The claims are directed to a system and method for providing an athlete with a performance profile and tracking the usage of athletic equipment. Claim 8, reproduced below, is illustrative of the claimed subject matter:

> 8. A system for tracking usage of athletic equipment of a user, comprising:
>
> a database server including a user database for maintaining records of users registered to access said database server;
>
> a training log server configured to:
>
> receive and store data from each registered user regarding a category of athletic activity in which the registered user engaged;
>
> receive and store data from each registered user regarding a distance the registered user trained for a given day for each category of athletic activity;
>
> receive and store data from each registered user regarding an amount of time the registered user trained for each category of athletic activity;
>
> calculate a time-based total distance for each category of athletic activity; and
>
> generate a graphical representation of at least one of the calculated time-based total distances;

a processor configured to determine whether the user is a registered user based on the records maintained in said user database, said processor being configured to generate a graphical user interface having a plurality of fields for entering data regarding the use of the athletic equipment used by the registered user, at least one of said fields pertaining to the date of first use of the athletic equipment by the registered user, another of said fields pertaining to a warning value enterable by the registered user, said processor being configured to: track usage of the athletic equipment based on usage data received and stored by said training log server, issue a warning to the registered user that the athletic equipment is approaching maximum usage once the usage reaches the warning value entered by the registered user, and issue an alert to the user after determining that the maximum usage has been reached; and

a wearable GPS-enabled mobile device which is internet ready, said GPS mobile device being configured to communicate training data live to said training log server as the user is training to automatically update said training log server.

REFERENCES[1]

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Lee	US 2,146,304	Feb. 7, 1939
Lee	US 6,442,505 B1	Aug. 27, 2002
Peterman	US 2007/0288157 A1	Dec. 13, 2007
Lee et al.	US 2011/0133918 A1	June 9, 2011

[1] We leave it to the Examiner to further consider the Lee 6,837,827 patent which is incorporated by reference in para. 29 of the Peterman reference and the Examiner may want to also consider the Kelsch reference ("Ultra Cycling » Training Log Online Options," http://www.blog.ultracycle.net/2010/05/training-log-online) both of which are of record in the prosecution history.

Strava "GPS Bike Routes and Cycling Training Log," from "Way Back Machine,"
https://web.archive.org/web/20100415021619/http://www.strava.com/

REJECTIONS

The Examiner made the following rejections:

Claims 8, 10–15, and 21–30 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 3–5.

Claims 8, 10–15, 21, 22, 29, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Strava, in view of Lee '505, further in view of Lee '304, and further in view of Peterman. Final Act. 6–27.

Claims 25–28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Strava, in view of Lee '505, and further in view of Lee '304. Final Act. 28–36.

Claims 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Strava, in view of Lee '505, further in view of Lee '304, further in view of Peterman, and further in view of Lee '918. Final Act. 37–40.

ANALYSIS

35 U.S.C. § 101

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." *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 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.* (citing *Mayo*, 566 U.S. at 77–78). 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*, 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.* (brackets 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 post-solution activity.'" *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

Turning to the first step of the *Alice* inquiry, the Examiner maintains that independent claims 8 and 25 are directed to abstract ideas. The Examiner finds that the claims are directed to:

> non-statutory subject matter because the claims as a whole, considering all claim elements both individually and in combination, do not amount to significantly more than an abstract idea. The claims are directed to the abstract idea of receiving, storing, organizing, and outputting data, which is a fundamental economic practice long-applied and well-known in many areas of business. For example, in *Cyberphone Sys. V. CNN Interactive Grp.,* 558 Fed. Appx. 988 (Fed. Cir. 2014), the Federal Circuit found that using categories to organize, store, and transmit information is well-established (Interim Guidance at 74,630-31). Here, the claims receive and store data provided by a user (e.g., bicycle equipment and usage data), organize the data

> by categories (e.g., by bicycle, by activity, by component), and output data based on a category or comparison (e.g., by time, by distance, by activity, by comparing data to a preset value to output a warning).
>
> The additional elements or combination of elements in the claims and specification other than the abstract idea per se amounts to no more than instructions to implement the abstract idea in a web-based platform, and merely use generic computer infrastructure to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.

(Final Act. 4). With regards to independent claim 8, the Examiner further finds that although claim 8 "add[s] a degree of particularity with respect to the context in which the abstract idea is applied (e.g., athletic training), the concept embodied by the majority of the limitations describes only the abstract idea of receiving, storing, organizing, and outputting data." (Final Act. 5). The Examiner further maintains

> the claimed invention is directed to the abstract idea of using categories to organize, store, and transmit data, as explained on page 4 of the Office action dated June 2, 2015. The abstract idea is defined by the limitations a database server including a user database for maintaining records of users registered to access said database server (i.e., storing data); a training log server configured to: receive and store data from each registered user regarding a category of athletic activity in which the registered user engaged (i.e., use categories to receive, organize, and store data); receive and store data from each registered user regarding a distance the registered user trained for a given day for each category of athletic activity (i.e., use categories to receive, organize, and store data); receive and store data from each registered user regarding an amount of time the registered user trained for each category of athletic activity (i.e., use categories to receive, organize, and store data); generate a graphical representation of at least one of the calculated time-based total distances (i.e., use categories to transmit, display, or output data);

> a processor configured to determine whether the user is a registered user based on the records maintained in said user database, said processor being configured to generate a graphical user interface having a plurality of fields for entering data regarding the use of the athletic equipment used by the registered user, at least one of said fields pertaining to the date of first use of the athletic equipment by the registered user, another of said fields pertaining to a warning value enterable by the registered user, (i.e., using categories to receive data); a wearable GPS-enabled mobile device which is internet ready, said GPS mobile device being configured to communicate training data live to said training log server as the user is training to automatically update said training log server. (i.e., receiving and using categories to organize and store data).

(Adv. Act. 3). In the Examiner's Answer, the Examiner reiterates the sweeping statement regarding the finding of the abstract idea from the Final Rejection:

> "The claims are directed to the abstract idea of receiving, storing, organizing, and outputting data, which is a fundamental economic practice long-applied and well-known in many areas of business" (FR p4). The identification of the abstract idea is based on a comparison to the Federal Circuit's analysis of the claims in in *Cyberfone Sys. v. CNN Interactive Grp.,* 558 Fed. Appx. 988 (Fed. Cir. 2014). In *Cyberfone,* the Federal Circuit found that using categories to organize, store, and transmit information is well-established (2014 IEG at 74,630-31). Here, the claims receive and store data provided by a user (e.g., bicycle equipment and usage data), organize the data by categories (e.g., by bicycle, by activity, by component), and output data based on a category or comparison (e.g., by time, by distance, by activity, by comparing data to a preset value to output a warning). (FR p4). This is also consistent with Appellant's specification at page 1 describing the "Field of the Invention" as "a system for **storing** training **data** entered by an athlete, **associating information** with the athlete that is related to the athlete's participation in

> training and/or racing activities, and **generating a profile** specific to the athlete." (App. Spec. p 1, emphasis by Examiner).

(Ans. 4–5).

Appellant's arguments, discussed below along with a discussion of various findings and conclusions of the Examiner, raise the dispositive issue of whether or not the claims are directed to an abstract idea at all. As further explained below, we find the Examiner has overgeneralized the claims. Put another way, we find the claims are directed to a technological improvement in the computer arts and are not directed to an abstract idea at all for the reasons explained by Appellant, and noted below.

We find the Examiner provides little analysis and factual support for the proffered findings that elements of the claimed invention are "well-known, routine, and conventional" in many areas of business. Additionally, the Examiner maintains that "Claim 8 does not recite any additional elements that amount to significantly more than the abstract idea of using categories to organize, store, and transmit information." (Ans. 12). The Examiner relies upon a comparison to the claims in *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014) ("*Content Extraction*" or "*CET*"). (Ans. 13). We find the Examiner's reliance upon *Content Extraction* to overgeneralize the finding of the *Content Extraction* case where those claimed functions were 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory and the Federal Circuit found the general concept of data collection, recognition, and storage were undisputedly well-known.

Additionally, the Examiner finds the present claims recite a "wearable GPS-enabled mobile device, which is internet ready," a generic database server, a generic training log server, and a generic processor to carry out "receiving and storing" of data including live updates from the mobile device. (Ans. 13).

We find the Examiner's findings do not correspond to the express language of the claims and overgeneralize in the finding and conclusion in *Content Extraction*.

Appellant maintains "[t]he claimed combination results in an improvement in the field of wireless athletic tracking and monitoring technology since a user no longer needs to wait until the completion of a training exercise before training data is uploaded to an online database." (App. Br. 10). We agree with Appellant. Additionally, Appellant contends:

> the GPS-enabled mobile device being configured to communicate training data live to the training log server results in an improvement to the GPS-enabled mobile device itself because the same amount of memory normally needed to store training data in the GPS-enabled mobile device is no longer required. A reduction in memory required also permits the GPS-enabled mobile device to be of lessor size, which is an advantage to users during their training activities.

(App. Br. 11). Again, we agree with Appellant. In short, these arguments from Appellant persuade us that the claims are not directed to an abstract idea at all.

The Examiner further maintains that

> Like the invention in *CET*, the present invention merely uses existing technological components in conventional and routine ways to carry out the abstract idea of organizing, storing, associating, processing, and otherwise "managing" data. What

> that data represents is inconsequential because it would not change how the abstract idea is carried out.

(Ans. 14).

We find the Examiner's conclusions oversimplify and generalize the claim limitations in the *Alice/Mayo* analysis and USPTO Guidelines to be based upon the Examiner's sweeping finding regarding the abstract idea.

In response to Appellant's argument that "the claims require a particular machine because they recite a processor that becomes a 'special purpose machine' programmed to perform particular functions," (App. Br. 11–12), the Examiner finds "a specially programmed computer is no longer sufficiently particular for purposes of subject matter eligibility under section 101." (Ans. 15). The Examiner further maintains that it was the Supreme Court's desire to exclude from eligibility those claims that make patentability dependent on the draftsperson's art by stating the abstract idea with instructions to "apply it" using a generic or programmable computer. (Ans. 15).

Again, we find the Examiner's analysis to be flawed based upon an over generalization of the abstract idea and oversimplification of the recited claim functions. We find the recited claim limitations to be more than "apply it" and more than dependent on the draftsperson's art by stating the abstract idea with instructions to "apply it" using a generic or programmable computer.

Because we find the Examiner has erred in the finding of an abstract idea and basing of the remainder of the analysis upon this finding, we cannot sustain the Examiner's conclusion of a lack of patent eligible subject matter

of independent claim 8 and its respective dependent claims based upon the Examiner's stated analysis.

The Examiner relies upon the same factual findings and conclusions with regards to independent claim 25, which is directed to a different combination of limitations than recited in independent claim 8 but sufficiently similar with respect to the Examiner's error. (Ans. 19–20). As a result, we find the Examiner has erred in the finding of an abstract idea and based the remainder of the analysis upon this finding, we cannot sustain the Examiner's conclusion of a lack of patent eligible subject matter of independent claim 25 and its respective dependent claims based upon the Examiner's stated analysis.

35 U.S.C. § 103

With regards to the obviousness rejection of claim 8, the Examiner relies upon a combination of four references to teach and suggest the claimed invention.

The Examiner relies upon the Strava reference to teach and suggest the use of an interface to track components usage and to disclose an interface to provide a suggested useful lifetime of some bicycle parts. (Final Act. 10–11). The Examiner relies upon the Lee '505 reference for tracking time and distance of bicycle rides and disclosing and suggesting a warning value enterable by a registered user and an alert to the user for the maximum usage. The Examiner finds that when the countdown is reached an alert will be given for the specific components or function. (Final Act. 12–14).

The Examiner further reasons and concludes that:

> Therefore, at the time of the invention it would have been obvious to a person having ordinary skill in the art to modify the web-based platform for tracking bicycle usage data such as the use of specific components of the bicycle, as disclosed by Strava, by incorporating a user preset limit on the use and a warning when use approaches the limit, as taught by Lee '505, because the combination of Strava in view of Lee '505 is merely a combination of prior art elements according to known methods to yield predictable results.

(Final Act. 13). Moreover, the Examiner reasons and concludes:

> [I]t would have been obvious to modify the user preset warning value disclosed by the combination of Strava in view of Lee '505 to generate both an alert when the preset limit is exceeded as well as an alert or warning when the usage approaches but has not yet exceeded the maximum usage value. Such a modification would simply require applying the same technology used to detect when the usage exceeds a maximum use threshold to detect when the usage is within an amount or ratio of that maximum value, and issue the warning in a similar manner. Because Lee '505 already shows how to issue the alert for one preset value, it would have been within the skill of a person having ordinary skill in the art to complete the modification to issue a warning when approaching the maximum value, which is merely a combination of prior art elements according to known methods to yield predictable results, as shown by Lee '304.

(Final Act. 14–15).

We find the Lee '304 reference is a mechanical speed signaling means for automotive vehicles from 1939. The Lee '304 reference discloses "a speedometer having provision for calling the driver's attention to the fact that the speed of the vehicle has reached or is about to reach the maximum lawful speed." (Lee '304, col. 1, ll. 3–7).

Appellant contends that attempting to modify the combination of Strava and Lee '505 with the dial-operated speed monitoring device of Lee '304 would lead to unpredictable results because the device of Lee '304 permits a car driver to receive a warning anytime the speed exceeds a predetermined setting, which may happen multiple times during an ordinary drive. (App. Br. 35). Appellant further argues that the Lee '304 reference is not reasonably pertinent to the entire problem being solved by the claimed invention of claim 8, and the reference cannot reasonably be said to be a familiar item to an inventor addressing the alerting of an athlete that their athletic equipment is approaching a maximum usage before the maximum usage occurs. (Reply Br. 15).

We agree with Appellant's arguments, and we disagree with the Examiner's findings and conclusions. We find the Examiner has not shown a reference which has both a warning and an alert. The Lee '304 reference merely shows feedback to an operator regarding the usage of the vehicle which is a single indication just as the Lee '505 reference with the alert. We disagree with the Examiner because the indication of being over a speed limit does not indicate or warn the user of a maximum usage as tracked by the training log server, but merely is an over a limit with a variable rather than an accumulated usage.

> The Examiner further finds and concludes that:
> implementing the early-warning feature of Lee '304 in the device of the combination of Strava in view of Lee '505 is merely an "application of modern electronics to a prior art mechanical" device, which is a simple substitution of one known element for another known element to obtain predictable results.

(Ans. 16). The Examiner further finds:

> it is well known that vehicle operators' attention is often preoccupied by "watching the road" and they fail to observe indications of vehicle usage parameters in a timely manner (Lee '304 cl:7-20) and as such an early warning prior to exceeding a maximum value allows the operator to make an informed decision about continued usage of the vehicle.

(Final Act. 16).

We disagree with the Examiner's combination of teachings and line of reasoning to reach the claim limitations of "track usage of the athletic equipment based on usage data received and stored by said training log server, issue a warning to the registered user that the athletic equipment is approaching maximum usage once the usage reaches the warning value entered by the registered user, and issue an alert to the user after determining that the maximum usage has been reached" because we find none of the references identified by the Examiner teach or suggest both a warning and an alert. Therefore, the Examiner is speculating in the combination of discrete elements to reach the combination of claimed elements.

Additionally, we agree with Appellant that the Examiner's rejection involves impermissible hindsight reconstruction. (App. Br. 43–44; Reply Br. 16).

Accordingly, we do not sustain the Examiner's obviousness rejection of claim 8. We also do not sustain the Examiner's obviousness rejection of claim 25 for these same reasons. Finally, we do not sustain the Examiner's obviousness rejections of the remaining claims for these same reasons. That is, we do not sustain any of the various grounds of rejection based on obviousness.

CONCLUSIONS

The Examiner erred in rejecting claims 8, 10–15, and 21–30 based upon a lack of patent-eligible subject matter under 35 U.S.C. § 101, and the Examiner erred in rejecting claims 8, 10–15, and 21–30 based upon obviousness under 35 U.S.C. § 103.

DECISION

For the above reasons, reverse the Examiner's decision rejecting claims 8, 10–15, and 21–30 based upon a lack of patent eligible subject matter under 35 U.S.C. § 101, and reverse the Examiner's decision rejecting claims 8, 10–15, and 21–30 based upon obviousness under 35 U.S.C. § 103.

REVERSED