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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 2016-005572
Application 13/071,434
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 23–31, 34–38, and 43–51 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 enabling a business to determine, communicate, and manage their credibility (Spec., para. 1). Claim 23, reproduced below, is representative of the subject matter on appeal.

23. A method performed by a machine comprising a processor and non-transitory computer-readable storage, the method for producing a report for identifying credibility data affecting business credibility of a particular business, the method comprising:

aggregating from a plurality of data sources to the non-transitory computer readable storage, credibility data comprising (i) qualitative data comprising textual business reviews directed to the particular business and (ii) quantitative data comprising business scores quantifiably rating the particular business;

ordering by operation of the processor, said qualitative data and said quantitative data into a plurality of groups, wherein each group of the plurality of groups represents a different component for business credibility of the particular business;

deriving by operation of the processor, a business credibility score for the particular business, the business credibility score representing business credibility of the particular business as collectively expressed by the textual business reviews of the qualitative data and the business scores of the quantitative data ordered to each group of the plurality of groups;

determining by operation of the processor, at least one area of the particular business needing improvement by processing the credibility data and identifying an aspect of the particular business negatively identified within the credibility data;

providing a suggested action which when performed by the particular business addresses the at least one area of the particular business needing improvement and improves the business credibility score; and

producing by operation of the processor, a report comprising (i) said business credibility score, (ii) said suggested action, and (iii) a set of hierarchical drill-down layers for presenting each subset of said qualitative data and said quantitative data that is ordered to each group of the plurality of groups.

THE REJECTIONS

The following rejections are before us for review:

1. Claims 23–31, 34–38, and 43–51 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 23–31 and 43–49 are rejected under 35 U.S.C. § 103(a) as unpatentable over Ruhl (US 7,962,461 B2, iss. June 14, 2011), Shilman (US 2009/0319342 A1, pub. Dec. 24, 2009), and Dun and Bradsteet Monitor ([https://web.archive.org/web/20070105140355/http://smallbusiness.dnb.com/manage-busin. . . 1/25/2015](https://web.archive.org/web/20070105140355/http://smallbusiness.dnb.com/manage-busin...)).
3. Claims 34–38 and 50–51 are rejected under 35 U.S.C. § 103(a) as unpatentable over Ruhl, Shilman, Dun and Bradsteet Monitor, and Galitsky (US 2009/0282019 A1, pub. Nov. 12, 2009).

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 evidence¹.

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).

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellants argue that the rejection of claim 23 is improper because the claim: is not directed to an abstract idea, is not directed to a fundamental practice, recites unconventional steps that confine it to a particular application and transform the claim, and is rooted in technology (App. Br. 8–18, Reply Br. 1–8).

In contrast, the Examiner has determined that the rejection is proper (Ans. 2–4, 24–28).

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 23 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 (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

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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 organizing business data to provide a suggested business action. This is a method of organizing human activities and a fundamental economic practice long prevalent in our system of commerce, and is an abstract idea beyond the scope of 35 U.S.C. § 101. The Specification at paragraph 1 states that the invention pertains to methods for businesses to determine, communicate, and manage their credibility. The Specification at paragraph 7 states that the invention generates a standardized score for business credibility based on credibility data. The preamble states that the method is directed to “producing a report for identifying credibility data affecting business credibility 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 over 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. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. The Specification at paragraphs 102–111 describes using conventional computer components in a conventional manner.

Further, while preemption “‘might tend to impede innovation more than it would tend to promote it,’ thereby thwarting the primary object of the

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patent laws” (*Alice*, 134 S. Ct. at 2354 (quoting *Mayo*, 566 U.S. at 71)), “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 23 is sustained. The remaining claims are directed to similar subject matter, and the rejection of these claims is sustained as well.

Rejections under 35 U.S.C. § 103

Claims 23–31

The Appellants argue that the rejection of claim 23 is improper because the prior art does not disclose the claim limitation requiring:

producing by operation of the processor, a report comprising (i) said business credibility score, (ii) said suggested action, and (iii) a set of hierarchical drill-down layers for presenting each subset of said qualitative data and said quantitative data that is ordered to each group of the plurality of groups.

(App. Br. 22).

In contrast, the Examiner has determined that the cited claim limitation is shown by Ruhl at Figures 6A–6C and column 14, line 42–column 15, line 5 (Ans. 6).

We agree with the Appellants. Ruhl at the above cited portions fails to disclose the above cited claim limitation. For example Ruhl at Figure 6A does disclose an “average rating” score but not the claimed “a set of hierarchical drill-down layers for presenting each subset of said qualitative

data and said quantitative data that is ordered to each group of the plurality of groups.” Ruhl at column 14, line 42–column 15, line 5 does disclose reviews to be sorted in various ways but fails to disclose the “suggested action” or “drill-down layers” for each subset of both “qualitative” and “quantitative” data. Accordingly, this rejection of claim 23 and its dependent claims is not sustained.

Claims 34–38

The Appellants argue that the rejection of claim 34 is improper because the prior art does not disclose the claim limitation requiring:

providing interactions associated with at least one credibility data ordered to a first drill-down layer, wherein said interactions are usable to access credibility data ordered to a second drill-down layer associated with said first drill-down layer.

(App. Br. 26).

In contrast, the Examiner has determined that the cited claim limitation is shown using the same rationale as given for claim 23 (Ans. 18). The citation to show the similar limitation in claim 23 was made to Ruhl at Figures 6A–6C and column 14, line 42–column 15, line 5 (Ans. 6). Here, the argued claim limitation is drawn to similar subject matter as in claim 23, and we do not find that the citations to Ruhl disclose this as addressed above. Accordingly, this rejection of claim 34 and its dependent claims is not sustained.

Claims 43–51

The Appellants argue that the rejection of claim 43 is improper because the prior art does not disclose the claim limitation requiring:

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identifying credibility of at least one individual associated in an operational capacity with the particular business; [and] adjusting the business credibility score according to the credibility of the at least one individual.

(App. Br. 27, 28).

In contrast, the Examiner has determined that the cited claim limitation is shown by Dun and Bradstreet Self Monitor at pages 9 and 11 (Ans. 17).

We agree with the Appellants. While the cited reference does disclose general methods of monitoring credit, the specific claim limitation above has not been shown. Specifically the ability to identify the credibility of “at least one individual associated in an operational capacity with the particular business” and to adjust the “business credibility score according to the credibility of the at least one individual” is not shown by the prior art citation. Accordingly, this rejection of claim 43 and its dependent claims is not sustained.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 23–32, 34–38, and 43–51 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

We conclude that Appellants have shown that the Examiner erred in rejecting claims 23–32, 34–38, and 43–51 under 35 U.S.C. § 103(a) as listed in the Rejections section above.

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DECISION

The Examiner's rejection of claims 23–31, 34–38, and 43–51 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