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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HEATH STALLINGS, JAPAN MEHTA, and DON RELYEA

Appeal 2016-006557
Application 13/281,943¹
Technology Center 2400

Before JASON V. MORGAN, SCOTT B. HOWARD, and JOYCE CRAIG,
Administrative Patent Judges.

MORGAN, *Administrative Patent Judge.*

DECISION ON APPEAL
STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 1–8, 10–13, and 20–25. Claims 9 and 14–19 are canceled. App. Br. 30–31. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

Invention

Appellants disclose “providing a program guide that includes a matrix of cells associated with a plurality of media content instances and providing

¹ Appellants identify Verizon Communications Inc. as the real party in interest. App. Br. 3.

a condensed program guide that includes a condensed matrix of a subset of the cells and a plurality of interstitial symbols.” Abstract.

Exemplary Claim (key limitations emphasized)

1. A method comprising:

providing, by a computing device, a program guide that includes a matrix of cells associated with a plurality of media content instances, the matrix of cells arranged along a time axis; and

providing, by the computing device, a condensed program guide that includes a condensed matrix of a subset of the cells and a plurality of interstitial symbols, the condensed matrix of the subset of the cells and the plurality of interstitial symbols arranged along a loose time axis, each interstitial symbol in the plurality of interstitial symbols representing a single cell that is included in the matrix of the cells and that is excluded from the condensed matrix of the subset of the cells.

Rejections

The Examiner rejects claims 1–8, 10–13, and 20–23 on the ground of non-statutory obviousness-type double-patenting based on claims 1–28 of Stallings et al. (US 8,051,447 B2; issued Nov. 1, 2011) (“Stallings ’447”). Final Act. 6.

The Examiner rejects claims 1–8, 10–13, and 20–24 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Adv. Act. 2.²

The Examiner rejects claims 1–8, 10–13, and 20–25 under 35 U.S.C. § 103(a) as being unpatentable over Wroblewski (US 2006/0250358 A1; published Nov. 9, 2006) and Gossweiler et al. (US 2008/0270886 A1; published Oct. 30, 2008) (“Gossweiler”). Final Act. 6–13.

² Herein, all references to “Adv. Act.” are to the Advisory Action of August 31, 2015.

OBVIOUSNESS-TYPE DOUBLE-PATENTING

Appellants do not present arguments with respect to the Examiner’s obviousness-type double-patenting rejection of claims 1–8, 10–13, and 20–23. *See* App. Br. 27. Accordingly, we summarily affirm this rejection.

35 U.S.C. § 101

Findings and Contentions

The Examiner concludes claim 1 is directed to an abstract idea. Adv. Act. 2. Specifically, the Examiner interprets claim 1 as being directed to an idea of itself based on individual recitations being directed to: (1) a generic computer; (2) performing generic computer functions; (3) collecting and comparing known information; (4) comparing new and stored information and using rules to identify options; (5) using categories to organize and store information; and (6) data recognition and storage. Ans. 5.

Appellants contend the Examiner erred because “the Advisory Action merely recites boilerplate language in attempting to set forth the § 101 rejection.” App. Br. 25. Appellants note the Examiner’s analysis in the Answer is partially directed to recitations found in amendments to claim 1 that were proposed (Amend. After Final 2 (July 31, 2015)), but not entered (Adv. Act. 1). Reply Br. 15. Appellants further argue the Examiner’s “approach of individually mapping the elements of claim 1 to alleged abstract concepts is fundamentally flawed.” *Id.* at 15–16. That “the *Mayo/Alice* analysis requires accurately summarizing what the claim as a whole is directed to and then considering whether the claim falls into one of the categories” representing a judicial exception to statutory subject matter. *Id.* at 16.

Analysis

To be statutorily patentable, the subject matter of an invention must be a “new and useful process, machine, manufacture, or composition of matter, or [a] new and useful improvement thereof.” 35 U.S.C. § 101. There are implicit exceptions to the categories of patentable subject matter identified in § 101, including: (1) laws of nature; (2) natural phenomena; and (3) abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). The Supreme Court has set forth a framework for distinguishing patents with claims directed to these implicit exceptions “from those that claim patent-eligible applications of those concepts.” *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66 (2012)). The evaluation follows a two-part analysis: (1) determine whether the claim is directed to a patent-ineligible concept, e.g., an abstract idea; and (2) if a patent-ineligible concept is present in the claim, determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the patent-ineligible concept itself. *See Alice*, 134 S. Ct. at 2355.

It is important to “tread carefully” when wielding 35 U.S.C. § 101 as an “invalidity tool, since ‘all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.’” *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1343 (Fed. Cir. 2018) (alteration in original) (quoting *Alice*, 134 S. Ct. at 2354). For example, the presence of an abstract concept within a claimed invention does not, by itself, render a claim abstract. *See RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017) (citing *Diamond v. Diehr*, 450 U.S. 175, 192 (1981)) (“In confirming patentability, the Supreme Court focused not on

the presence of a mathematical formula but on the subject matter of the claims as a whole”), *cert. denied*, 138 S. Ct. 672 (2018). Similarly, even though adding one abstract idea to another abstract idea does not render a claim non-abstract (*see RecogniCorp*, 855 F.3d at 1327), patent claims must be “considered as a whole” in ascertaining whether they are invalid as being directed to non-statutory subject matter (*Alice*, 134 S. Ct. at 2355 n.3 (quoting *Diehr*, 450 U.S. at 188)).

Here, the Examiner’s analysis under 35 U.S.C. § 101 falls short. In neither the Advisory Action nor the Answer does the Examiner properly identify what abstract concept claim 1, *as a whole*, purportedly encompasses.

We agree with Appellants that the Examiner’s Advisory Action § 101 analysis can be characterized as “boilerplate.” *See* App. Br. 25. The Examiner summarizes § 101 law, as understood in light of *Alice*, without analyzing the claimed invention itself. Adv. Act. 2; *see also* Ans. 4.

We also agree with Appellants that the Examiner erred by “individually mapping the elements of claim 1 to alleged abstract concepts.” Reply Br. 15–16. The Examiner divides claim 1 into seven parts, then maps each part to one or two abstract ideas. Ans. 5. However, the Examiner does not identify what abstract idea the claim *as a whole* represents. *Id.*

Even when a claim represents a combination of multiple abstract ideas, the proper analysis under *Alice* requires an analysis of what patent-ineligible concept the claim *as a whole* encompasses. *Cf. RecogniCorp*, 855 F.3d at 1326–27 (a claim that combined mathematics with encoding and decoding was still directed, as a whole, to the abstract idea of encoding and decoding image data).

For these reasons, the Examiner’s analysis under 35 U.S.C. § 101 fails to show that claim 1 is directed to a patent-ineligible concept such as an abstract idea. Therefore, we agree with Appellants that the Examiner fails to show that claim 1 is directed to patent-ineligible subject matter.

Accordingly, we do not sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 1, and claims 2–8, 10–13, and 20–24, which are similarly rejected.

35 U.S.C. § 103(a)

Findings and Contentions

In rejecting claim 1 as obvious, the Examiner concludes that Wroblewski’s on-demand view, with a double-shadow used to indicate hidden objects or nested sub-groups, combined with Gossweiler’s arrays or grids with folds, renders obvious the claimed invention, including: (1) *providing a program guide that includes a matrix of cells arranged along a time axis* and (2) *providing a condensed program guide that includes a condensed matrix of a subset of the cells and a plurality of interstitial symbols arranged along a loose time axis*. See Final Act. 7 (citing Wroblewski Fig. 14; Gossweiler Fig. 1B); *see also* Wroblewski ¶¶ 91–92; Gossweiler ¶ 48; Ans. 15–22. Specifically, the Examiner relies on Gossweiler’s use of graphics as an alternative to the display of a hidden time period (Ans. 17 (citing Gossweiler ¶ 40); Final Act. 2–3) and Wroblewski’s double-shadows (Ans. 15–16 (reproducing Wroblewski Fig. 14 with annotations emphasizing the Examiner’s reliance on the double-shadows); Final Act. 5–6). The Examiner concludes it would have been obvious to an artisan of ordinary skill to combine these teachings in the claimed manner “for the purpose of a program guide.” Final Act. 7 (emphasis omitted); *see*

also Reply Br. 15 (“the examiner cannot be denied the use of common sense”).

Appellants contend the Examiner erred by failing to clearly articulate “the reasons why it would have been obvious for one of ordinary skill in the art to have modified [an] on-demand view such as that illustrated in FIG. 14 of Wroblewski to include a time axis or a loose time axis allegedly disclosed by Gossweiler.” App. Br. 9. In particular, Appellants contend:

It is clear from FIG. 14 of Wroblewski that the representative items of Wroblewski are arranged in groups according to genre for the purpose of facilitating a user exploring media content according to genre in an on-demand context. Modifying the features illustrated in the embodiment shown in FIG. 14 of Wroblewski to somehow be arranged along a time axis or a loose time axis would frustrate the purpose of FIG. 14 of Wroblewski at least because the groupings according to genre would necessarily be disrupted. In addition, by disrupting the groupings according to genre, such a modification would change the principle of operation of the embodiment shown in FIG. 14 of Wroblewski by changing FIG. 14 from an on-demand interface to some other interface that includes a time axis, which would necessarily render the embodiment of FIG. 14 inoperable for its intended purpose.

Reply Br. 8–9; *see also* App. Br. 19–20.

Analysis

As Appellants correctly note, Wroblewski’s Figure 14 illustrates an on-demand view that uses representative items grouped according to genre. App. Br. 9, 19; *see also* Wroblewski Fig. 14, ¶ 91 (“A single forward scroll click will move the target object from the first group **1102** (Genre A) to the next group **1110** (Genre B)”). “Selecting one of the groups will zoom into that group.” Wroblewski ¶ 92. Zooming in opens a view with additional representative items grouped according to sub-genres of the selected group

or genre. *Id.* Fig. 15 (illustrating a zoomed-in view with groups representing Genre A:1, Genre A:2, etc.). Gossweiler, in contrast, illustrates a television programming grid having a channel axis and a time axis. *See* Gossweiler Fig. 1B, ¶ 45.

We agree with Appellants that the Examiner’s findings and explanation do not show that it would have been obvious to an artisan of ordinary skill to combine the cited teachings and suggestions of Wroblewski and Gossweiler in the claimed manner. The Examiner concludes that the claimed would have been obvious “for the purpose of a program guide” (Final Act. 7) or as a matter of common sense (Reply Br. 15). However, the Examiner fails to address, persuasively, Appellants’ reasonable contention that it would not have been obvious to modify Wroblewski’s on-demand, genre-centric view by arranging a matrix of cells along a time axis or a condensed matrix of a subset of the cells along a loose time axis. *See, e.g.,* App. Br. 9.

The Examiner proffers that Appellants’ lengthy submission of art purportedly related to Wroblewski and Gossweiler evinces that it would have been obvious to an artisan of ordinary skill to combine their teachings and suggestions “because applicant feels strongly that the arts are of the same field and are relevant.” Final Act. 3 (emphasis omitted); *see also* Ans. 19. Evidence that the cited art teachings are directed to familiar elements and known methods can show that a combination is likely to have been obvious when the combination “does no more than yield predictable results.” *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). However, the Examiner’s findings merely show that certain features of Wroblewski and Gossweiler would have been familiar to an artisan of ordinary skill. The

Examiner's findings and explanation fail to show that any known methods for combining the cited Wroblewski and Gossweiler would, with predictably, have resulted in the claimed invention. *See, e.g.*, Final Act. 7.

For these reasons, we agree with Appellants the Examiner does not show that it would have been obvious to an artisan of ordinary skill to combine the cited teachings and suggestions in the manner recited in claim 1. Accordingly, we do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 1, and claims 2–8, 10–13, and 20–25, which the Examiner similarly rejects based on the combined teachings and suggestions of Wroblewski and Gossweiler. *See, e.g.*, Final Act. 11.

DECISION

We affirm the Examiner's decision rejecting claims 1–8, 10–13, and 20–23 on the ground of obviousness-type double-patenting.

We reverse the Examiner's decision rejecting claims 1–8, 10–13, and 20–24 under 35 U.S.C. § 101.

We reverse the Examiner's decision rejecting claims 1–8, 10–13, and 20–25 under 35 U.S.C. § 103(a).

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 1–8, 10–13, and 20–23 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

We reverse the Examiner's decision rejecting claims 24 and 25.

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. § 41.50(f).

AFFIRMED-IN-PART