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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STRATTON C. LLOYD and ALEXANDER GOLDSTEIN

Appeal 2016-006623[1]
Application 10/731,696[2]
Technology Center 3600

Before JOSEPH A. FISCHETTI, BEVERLY M. BUNTING, and BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the decision rejecting claims 1–21, 23–37, and 39–46, which are all the pending claims in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and enter a New Ground of Rejection under 35 U.S.C. § 101 pursuant to our authority under 37 C.F.R. § 41.50(b).

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[1] Our Decision references Appellants' Appeal Brief ("App. Br.," filed Feb. 6, 2014), Reply Brief ("Reply Br.," filed Aug. 4, 2014), and Specification ("Spec.," filed Dec. 9, 2003), as well as the Examiner's Answer ("Ans.," mailed June 4, 2014), and the Final Office Action ("Final Act.," mailed Sept. 13, 2013).

[2] Appellants identify "Oracle Corporation" as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Claimed Subject Matter

Appellants' claimed invention "relates generally to generating sales forecasts and particularly to automatically archiving forecasts and presenting the archived forecasts." Spec. ¶ 1.

Method claim 1, system claim 16, and computer-readable storage medium claim 32 are the independent claims on appeal, and recite substantially similar subject matter. *See* App. Br., Claims Appendix. Claim 1, reproduced below reformatted, is illustrative of the subject matter on appeal:

> 1. A computer-implemented method comprising:
>
> receiving a forecast definition at a computer system, wherein the forecast definition comprises a definition of a plurality of forecast intervals;
>
> automatically generating a plurality of forecast snapshots, using a processor of the computer system, wherein the automatically generating the plurality of forecast snapshots is performed prior to receiving a forecast request for displaying forecast information, and the automatically generating the plurality of forecast snapshots comprises at each forecast interval of the plurality of forecast intervals, automatically generating a forecast snapshot of the plurality of forecast snapshots, wherein the automatically generating the forecast snapshot comprises automatically generating a forecast, wherein the forecast corresponds to the forecast interval, and the automatically generating the forecast is performed according to the forecast definition, and automatically generating forecast summary information for the forecast, and storing the forecast snapshot, wherein the forecast snapshot comprises the forecast, and the forecast summary information for the forecast;
>
> in response to receiving the forecast request, retrieving a stored forecast snapshot, wherein the stored forecast snapshot is one of the plurality of forecast snapshots; and

> displaying forecast information for the stored forecast snapshot, wherein the forecast information comprises a respective forecast for the stored forecast snapshot, and a respective forecast summary information for the forecast, and the forecast information is displayed on a display coupled to the processor.

App. Br. 25–26, Claims Appendix.

Rejection

Claims 1–21, 23–37, and 39–46 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sultan (US 6,804,657 B1, issued Oct. 12, 2004), *Document Update for Siebel Sales User Guide*, published December 4, 2001 (hereinafter "Siebel"), and *Large-Scale Automatic Forecasting: Millions of Forecasts* by Michael Leonard (http://support.sas.com from Wayback Machine, retrieved July 6, 2003) (hereinafter "SAS"). Final Act. 2–18.

ANALYSIS

Appellants argue that Sultan, on which the Examiner relies, fails to teach or suggest automatically generating forecast snapshots at each forecast interval, as called for by independent claims 1, 16, and 32. App. Br. 13. In particular, Appellants argue that Sultan is completely silent with regard to when the forecasts are to be generated because Sultan's forecasts are "generated for a given forecast interval, and not at each forecast interval." *Id.* Appellants contend that the Examiner is misinterpreting the recited limitation of *at each forecast interval* of the plurality of forecast intervals, because a first forecast snapshot being generated at a first forecast interval refers to a first point in time, and a second forecast snapshot generated at a

second forecast interval to a second point in time; each such generation is performed at a distinct, pre-defined point in time. *Id.* at 14–15.

Appellants' arguments are persuasive of error.

During examination, "claims . . . are to be given their broadest reasonable interpretation consistent with the specification, [ ] and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990) (internal citation and quotations omitted). This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989).

Here, each of the independent claims requires "*at* each forecast interval of the plurality of forecast intervals, automatically generating a forecast snapshot of the plurality of forecast snapshots." *See* App. Br., Claims Appendix. The ordinary and customary meaning of the term "at" is "[e]xpressing the time when an event takes place."[3] The claims specify that "the forecast definition comprises a definition of a plurality of forecast intervals." *See id.* Appellants' Specification at paragraph 21 (added emphasis) describes forecast intervals as follows:

> Figure 1 is a display page illustrating a previously specified forecast definition in one embodiment. The display page 100 includes a forecast definition area 101. The forecast definition area includes a forecast interval area 102, a next forecast date area 103, and a forecast participants area 104. *The forecast interval area indicates the frequency at which forecasts are to be generated and saved as forecast snapshots. In this example,*

[3] https://en.oxforddictionaries.com/definition/at (last visited March 29, 2018).

> *a forecast is generated on a weekly basis every Sunday. The next forecast date area indicates the date at which the next forecast is to be generated.* In this example, the next forecast is to be generated on Sunday, Nov. 23, 2003.

The Specification describes forecast intervals as the frequency at which forecasts are to be generated, at a predefined point in time. *See supra*. In light of the Specification, one of ordinary skill in the art would interpret the limitation "at each forecast interval of the plurality of forecast intervals, automatically generating a forecast snapshot of the plurality of forecast snapshot" to mean automatically generating a forecast snapshot at a predefined point in time. We find Appellants' proposed interpretation of the disputed claim limitation is consistent with the plain meaning of claim language and the Specification.

The Examiner's reliance on Sultan, in which the Examiner finds "discloses generating the forecast snapshot for a particular period" (Ans. 31), is inconsistent with the plain meaning of the claim language as would be interpreted by one of ordinary skill in the art, and, thus, fails to disclose at each forecast interval, automatically generating a forecast snapshot, as required by each of the independent claims. Sultan is directed to "[a] method of generating a real time global sales forecast for a company." Sultan, Abstract. The object of Sultan's invention is to generate real time sales forecasts at any level of the sales force hierarchy upon demand or request over a selected time period. *See* Sultan, 1:64–2:37. Contrary to the claim language, which requires a predefined parameter for when (at each forecast interval) forecast snapshots are to be automatically generated,

Sultan discloses that sales forecasts are generated upon demand[4] and in real time *for* a specified time period or the period for which sales are forecasted (i.e., quarterly sales), and fails to account for the limitation, "at each forecast interval of the plurality of forecast intervals, automatically generating a forecast snapshot of the plurality of forecast snapshots," as required by independent claims 1, 16, and 32.

Additionally, the Examiner asserts that "SAS discloses the forecast is generated automatically with respect to the forecast interval." Ans. 31. According to the Examiner, SAS "shows the automatic forecasting can be generated in frequency or time interval e.g. hourly, daily, weekly, monthly, quarterly, yearly or many other variants of the basis time intervals." *Id.* (citing SAS pg. 3). Appellants argue that "[t]he 'frequency' discussed in the cited portions of SAS is an 'accumulation frequency,' which pertains to how often timestamped data is 'collected' or 'accumulated,' i.e., gathered." Reply Br. 18–19 (citing SAS pgs. 3, 6) (emphasis omitted). We are persuaded by Appellants' argument because the rate at which, or period of time for which data is gathered, fails to disclose how often a forecast is generated, thus, failing to cure the above discussed deficiency.

Accordingly, we do not sustain the rejection of independent claims 1, 16, and 32 under 35 U.S.C. § 103, and claims 2–15, 17–21, 23–31, 33–37, and 39–46 which dependent from each of independent claims 1, 16, and 32. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("dependent claims are nonobvious if the independent claims from which they depend are nonobvious").

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[4] The Examiner concedes that Sultan's "forecast manually is generated prior [to] the receiving request." Ans. 23.

New Ground of Rejection—Non-Statutory Subject Matter

Pursuant to our authority under 37 C.F.R. § 41.50(b), we enter a rejection of claims 1–21, 23–37, and 39–46 under 35 U.S.C. § 101.

Section 101 defines patent-eligible subject matter as "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof," subject to the other limitations of the Patent Act. 35 U.S.C. § 101. Apart from the Patent Act, the Supreme Court has created exceptions to the literal scope of § 101. "Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)).

In *Alice*, the Court supplied a two-step framework for analyzing whether claims are patent eligible. First, we determine whether the claims at issue are "directed to" a judicial exception, such as an abstract idea. 134 S. Ct. at 2355. If not, the inquiry ends. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claims are determined to be directed to an abstract idea we next consider whether the claims contain an "inventive concept" sufficient to "transform the nature of the claim into a patent-eligible application." *Alice*, 134 S. Ct. at 2355.

Claims 1–15 and 39–46

Under *Alice* step one, "the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). We look to whether the claims focus on a specific means or method, or are instead directed to a result or effect that itself is the abstract idea and merely invokes generic processes and machinery. *McRO,*

Inc. v. Bandai Namco Games Am. Inc., 837 F.3d 1299, 1314 (Fed. Cir. 2016).

Appellants' invention is drawn to "[a] method and system for defining and generating forecasts." Spec. ¶ 19. Independent claim 1 recites a computer-implemented method comprising the steps of receiving a forecast definition, automatically generating a plurality of forecast snapshots, retrieving a stored forecast snapshot, and displaying forecast information. App. Br. 25–26 (Claims Appendix).

We determine that claim 1 as a whole is directed to the abstract idea of generating forecasts on a computer, or automatically generating forecasts based on a defined frequency. The focus of the claimed advance is in automatically generating sales forecasts in accordance with a forecast definition because prior art "solutions require that an administrator manually initiate each forecast, which can present problems if the administrator is unavailable or forgets to initiate a forecast at the appropriate time." Spec. ¶ 4. Here, claim 1 is not directed to a specific improvement in the way computers operate. *Cf. Enfish*, 822 F.3d at 1335–36. Instead, claim 1 is directed to certain functionality—the ability to automatically generate forecasts, which merely claim the result. When "the focus of the asserted claims" is "on collecting information, analyzing it, and displaying certain results of the collection and analysis," the claims are directed to an abstract idea. *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).

In step two, we consider the elements of the claim, both individually and as an ordered combination, to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the

abstract idea. *Content Extraction & Transmission LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). This is the search for an inventive concept, which is something sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. *Id.* For example, merely reciting the use of a generic computer cannot convert a patent-ineligible abstract idea into a patent-eligible invention. *Alice*, 134 S. Ct. at 2358; *Versata Dev. Group, Inc. v. SAP Am.*, Inc., 793 F.3d 1306, 1332 (Fed. Cir. 2015).

We determine that the elements of the claim—both individually and when combined—do not transform the claimed abstract idea into a patent-eligible application of the abstract idea. The claimed invention can readily be understood as adding conventional computer components to well-known business practices. For instance, claim 1 merely requires using a processor of a computer system. The Federal Circuit has repeatedly determined that such claims do not contain an "inventive concept" under *Alice* step two and are invalid under § 101. *See Elec. Power Grp.*, 830 F.3d at 1353–56; *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 717 (Fed. Cir. 2014). It is not enough to point to conventional applications and say "do it on a computer." *Cf. Alice*, 134 S. Ct. at 2358 ("Stating an abstract idea while adding the words 'apply it with a computer'" is not enough for patent eligibility) (quoting Mayo, 132 S. Ct. at 1294).

For the foregoing reasons, we reject independent claim 1 under 35 U.S.C. § 101, including dependent claims 2–15 and 39–46, which further define the abstract idea.

Claims 16–21, 23–37

Claims directed to an apparatus or computer recordable storage medium despite their format, should be treated no differently from the comparable process claims held to be patent ineligible under § 101. As the Supreme Court has explained, the form of the claims should not trump basic issues of patentability. *See Parker v. Flook*, 98 S. Ct. 2522, 2527 (1978) (advising against a rigid reading of § 101 that "would make the determination of patentable subject matter depend simply on the draftsman's art and would ill serve the principles underlying the prohibition against patents for 'ideas' or phenomena of nature."). As such, independent claims 16 and 32, similar to independent claim 1, fail to satisfy the *Alice* framework. Therefore, we reject system claims 16–21 and 23–31, and computer-readable storage medium claims 32–37 under 35 U.S.C. § 101 for the same reasons discussed above.

DECISION

The Examiner's rejection under 35 U.S.C. § 103 is REVERSED.

We enter a NEW GROUND of rejection of claims 1–21, 23–37, and 39–46 under 35 U.S.C. § 101 pursuant to 37 C.F.R. § 41.50(b).

37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review." Thus, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, Appellants must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the newly rejected claims:

> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the

examiner, in which event the prosecution will be remanded to the Examiner.

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record.

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).

REVERSED; 37 C.F.R. § 41.50(b)