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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALLAN GINSBURG, DAVID R. MURRAY,
ARTHUR WEINBERGER, and JEROME WILLIAMS

Appeal 2016-006773¹
Application 13/096,186²
Technology Center 3600

Before MICHAEL C. ASTORINO, MATTHEW S. MEYERS, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C.
§ 6(b).

We AFFIRM.

¹ Our Decision references Appellants' Appeal Brief ("Appeal Br.," filed October 16, 2015) and Reply Brief ("Reply Br.," filed May 13, 2016), the Examiner's Answer ("Ans.," mailed April 15, 2016), and Final Office Action ("Final Act.," mailed May 18, 2015).

² Appellants identify iHeartMedia Management Services, Inc., as the real party in interest (Appeal Br. 3).

CLAIMED INVENTION

Appellants' claims relate to an inventory management system that "can increase yield while improving the customer experience by taking into consideration additional factors in price forecasting" (Spec. ¶ 13).

Claims 1, 10, and 19 are the independent claims on appeal. Claim 1 reproduced below (with bracketed lettering added), is illustrative of the subject matter on appeal:

1. A method comprising:

[a] receiving, by executing a program instruction in a computer system, information indicating selected markets within a geographic demarcation;

[b] setting filters, by executing a program instruction in a computer system, to filter a station from a plurality of stations within at least one selected market based on criteria associated with the filtered station;

[c] obtaining, by executing a program instruction in a computer system, a buyer's criteria;

[d] managing advertising unit inventory, by executing a program instruction in a computer system that compiles a grouping of the advertisement units to be offered for sale as a scenario, wherein the advertisement units comprising the scenario are associated with the filtered station and selected based on the buyer's criteria; and

[e] offering the scenario of advertisement units for sale to a current buyer, wherein a price of the scenario is based on the current buyer's criteria and a purchasing history of the current buyer, by executing a program instruction in a computer system.

REJECTION

Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

Appellants argue independent claims 1, 10, and 19 as a group (*see* Appeal Br. 8–14; *see also* Reply Br. 4–7). We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Alice Corp. Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon—after all, they take place in the physical world. *See Mayo [Collaborative Servs. v. Prometheus Labs. Inc.]*, 566 U.S. 66, 71 (2012)] (“For all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.”) Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on 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); *see Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1375, 2016 WL 1393573, at *5 (Fed.Cir.2016) (inquiring into “the focus of the claimed advance over the prior art”).

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). “The ‘abstract idea’ step of the inquiry calls upon us to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC*

v. DIRECTV, LLC, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); *Enfish*, 822 F.3d at 1335.

In rejecting independent claim 1, the Examiner finds the claims are directed to “the performance of a fundamental economic practice and/or a method of organizing human activity,” and as such are directed to a patent-ineligible abstract idea (Final Act. 4). More particularly, the Examiner finds the claims are directed to “an inventory management method in order to enhance inventory pricing and maximize revenue” (Ans. 3). The Examiner further finds the claims fail to include significantly more than the abstract idea because the “[S]pecification does not recite any language to indicate that the computer-implemented invention is being performed on anything other than a generic computer and/or merely performing functions that are ‘well-understood, routine, [and] conventional activities previously known to the industry’” (Final Act. 4).

In response, Appellants argue that the Examiner’s rejection is improper because it is based on boilerplate language and “[i]n only a single entry has the Examiner provided a discussion of the actual claims” (Appeal Br. 9). We cannot agree.

By way of background, the Examiner finds:³

[t]he claimed invention describes the steps for managing inventory comprising (i) receiving identification of a geographic

³ We note that the Examiner improperly refers to an additional method step while describing Appellants’ claimed invention (*see* Ans. 3, “Examiner concedes that the arguments contained in the final rejection do contain a typographical error, as the arguments contained in the final rejection recite that the claimed invention contains an extra method step”). We find that this was a minor oversight.

market; (ii) filtering stations based upon the identified geographic market; (iii) obtaining a buyer's criteria; (iv) compiling advertising units to be offered for a sale based upon the filtered stations and the buyer's criteria; . . . and [(v)] pricing the advertising units based upon the buyer's criteria and the purchasing history of the buyer.

(Final Act. 4). The Examiner further finds “the claimed invention is directed toward an inventory management method in order to enhance inventory pricing and maximize revenue” (Ans. 3 (citing Spec. ¶ 2)), and takes the position “that inventory management and pricing that inventory to maximize revenue is a fundamental economic practice” (Ans. 4). Thus, we determine initially the Examiner has adequately articulated that the claims are directed to an abstract idea.

To the extent Appellants argue that the Examiner erred in adequately supporting this determination by “fail[ing] to identify the exception as it is actually recited (i.e., set forth or described) in each of the claims” (Appeal Br. 9), we are unpersuaded. In this regard, there is no requirement that examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, para. IV, “JULY 2015 UPDATE: SUBJECT MATTER ELIGIBILITY” to 2014 INTERIM GUIDANCE ON PATENT SUBJECT MATTER ELIGIBILITY (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014):

The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be *a question of law*.[□] Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.

(Emphasis added.) We agree that evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. Based on the above analysis set forth by the Examiner, we are unpersuaded it is necessary in this case.

Instead, we need only look to other decisions where similar concepts were previously found abstract by the courts. *See Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“Instead of a definition [for what an ‘abstract idea’ encompasses], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”)

To that end, as noted above, the Examiner finds the claims are directed to “an inventory management method in order to enhance inventory pricing and maximize revenue” (Ans. 3). Broadly, we agree that the Examiner is correct. According to Appellants’ Specification,

[t]he present invention relates to a method and system for providing enterprise management and bundling of perishable inventory which varies in value over its life and is susceptible to value-based pricing to achieve maximum revenue. More specifically, the present invention maximizes revenue of perishable inventory such as television (TV), radio and outdoor advertisements and entertainment industry events using multiple variables in inventory control and optionally pricing fuzzy logic algorithms to create scenario plans which present the most profitable bundling of offerings and which meet the customer’s needs.

(Spec. ¶ 2). The Specification discloses that “[i]nventory or revenue management systems and methods have been in existence at least since the early 1980’s when the airline and car rental industries began adopting

revenue management as a regular business practice” (*id.* ¶ 3). The Specification further discloses

[t]he basic premise is that revenue can be increased by managing the yield from inventory. Yield management is the practice of maximizing profits from the sale of a perishable inventory, such as advertising time, airline seats, cruise berths, rental cars, hotel rooms, etc., through the systematic use of historical purchasing information, pricing and inventory controls and customer service improvements.

(*Id.*). And, taking independent claim 1 as representative, the claimed subject matter is generally directed to a method including steps for receiving information, i.e., geographic information, setting filters based on that information, receiving additional information, i.e., criteria, filtering inventory based on the received information, and offering the inventory for sale at a price based on the received information and historical purchasing information (*see* Appeal Br. 16, Claims App.).

Thus, we agree with the Examiner that independent claim 1 is directed to “an inventory management method in order to enhance inventory pricing and maximize revenue” (Ans. 3; *see also id.* at 7). We also agree with the Examiner that “inventory management and pricing that inventory to maximize revenue is a fundamental economic practice” (*id.* at 4), and is similar to certain fundamental economic and conventional business practices that our reviewing courts have found patent ineligible, like intermediated settlement (*see Alice*, 134 S. Ct. at 2356–57), creating a contractual relationship in guaranteeing performance of an online transaction (*see buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352, 1355 (Fed. Cir. 2014)), “verifying the validity of a credit card transaction over the Internet” (*CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir.

2011)), and using advertising as a currency on the Internet (*Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014)).

We also note the claimed steps for “receiving . . . information,” “setting filters,” “obtaining . . . criteria,” “managing . . . inventory,” and “offering” inventory, accomplish little more than collecting data, analyzing the data, and then presenting the data based on the analysis, and is similar to the steps that the Federal Circuit determined were patent ineligible in *Electric Power*. In *Electric Power*, the method claims at issue were directed to performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results. *Elec. Power Grp. LLC*, 830 F.3d at 1351–52. The Federal Circuit held that the claims were directed to an abstract idea, explaining that “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354.

Accordingly, we find that independent claim 1 involves nothing more than receiving data, organizing data, and displaying data — activities squarely within the realm of abstract ideas. *See, e.g., Elec. Power Grp., LLC*, 830 F.3d at 1353–54 (explaining that 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); *see also Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (holding claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be

completed upon the occurrence of an event] on a computer” not patent eligible).

Step two is “a 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.’” *Alice*, 134 S. Ct. at 2355 (citing *Mayo*, 566 U.S. at 72–73).

And, similar to the situation in *Electric Power*, we find nothing sufficient to remove the claims from the class of subject matter ineligible for patenting. As the court explained in *Electric Power*, “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Elec. Power Grp. LLC*, 830 F.3d at 1355.

Here, as the Examiner points out, “[t]he [S]pecification does not recite any language to indicate that the computer-implemented invention is being performed on anything other than a generic computer and/or merely performing functions that are ‘well-understood, routine, [and] conventional activities previously known to the industry’” (Ans. 7). Although, Appellants contend that the “claims constitute more than just a recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry” (Appeal Br. 11), there is no indication in the record that any specialized computer hardware or other “inventive” computer components or functions are required to perform steps of exemplary independent claim 1. Thus, we agree with the Examiner that the steps recited by independent claim 1 amount to nothing more than mere

instructions to implement the abstract idea on a generic computer (Final Act. 4; *see also* Ans. 8) — none of which add inventiveness because they merely require the application of conventional, well-known analytical steps. *See Ultramercial*, 772 F.3d at 716 (“[T]he claimed sequence of steps comprises only ‘conventional steps, specified at a high level of generality,’ which is insufficient to supply an ‘inventive concept.’”) (citing *Alice*, 134 S. Ct. at 2357).

We also are not persuaded by Appellants’ argument that the claims “constitute more than just a recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional” (Appeal Br. 10 (emphasis omitted)) because “the claims have been shown to be novel in view of the prior art (i.e., no outstanding art rejections)” (*id.* at 10–11). To the extent Appellants argue that independent claim 1 necessarily contains an “inventive concept” because Appellants’ claims recite particular features which they allege are not disclosed in the prior art (*id.*), Appellants misapprehend the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “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.’” *Alice*, 134 S. Ct. at 2355. A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Appellants also argue that even if the claims are directed to an abstract idea, the fact that the Examiner fails to provide any prior art rejection “is a

factual finding showing that the present claims do not preempt all possible uses of a potential abstract idea” (Appeal Br. 11). We cannot agree.

Although the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption,” *Alice*, 134 S. Ct. at 2354, characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354). Yet although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellants last argue that the claims are not directed to an abstract idea at least because

[t]he claims do not simply recite abstract ideas in that they do not “merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.”

(Appeal Br. 11 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)). Appellants’ argument is not persuasive.

Here, the claims do not, for example, purport to improve the functioning of the computer itself or involve a solution necessarily rooted in computer technology to overcome a problem specific to the realm of

computer networks, but instead embody the use of generic computer components in a conventional manner to perform an abstract idea, which, as the Court in *DDR Holdings* explained, is not patent eligible. *DDR*, 773 F.3d at 1256 (“[T]hese claims in substance were directed to nothing more than the performance of an abstract business practice on the Internet or using a conventional computer. Such claims are not patent-eligible.”). Nor do the claims effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of utilizing “an inventory management method in order to enhance inventory pricing and maximize revenue” (Ans. 3; *see also id.* at 7; *cf.* Spec. ¶¶ 2–3), which under our precedents, is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

In view of the foregoing, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of independent claim 1, and claims 2–20, which fall with independent claim 1.

DECISION

The Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101 is affirmed.

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