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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN KNORR

Appeal 2016-007566
Application 14/134,294
Technology Center 3600

Before JOHN A. EVANS, MATTHEW J. McNEILL, and JASON M. REPKO, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] seeks our review under 35 U.S.C. § 134(a) from the Examiner's final rejection of Claims 1 and 2. App. Br., Claims App'x.

We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

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[1] Appellant states the real party in interest is Super Internet Site System Pty. Ltd. App. Br. 1.

[2] Rather than reiterate the arguments of the Appellant and the Examiner, we refer to the Appeal Brief (filed January 14, 2016, "App. Br."), the Reply Brief (filed August 3, 2016, "Reply Br."), the Examiner's Answer (mailed June 3, 2016, "Ans."), the Final Action (mailed April 24, 2015, "Final Act."), and the Specification (filed December 19, 2013, "Spec.") for their

STATEMENT OF THE CASE

The claims relate to a method of managing the delivery of offers from suppliers to members via a spatial marketplace system. *See* Abstract.

INVENTION

Claim 1 is independent. An understanding of the invention can be derived from a reading of Claim 1, which is reproduced below:

> 1. A computer implemented method of establishing a database of potential customers for delivery of offers, the method including the following steps:
>
> (a) defining a unique catchment area for suppliers by specifying a geographical region via an Internet browser to target members whose spatial identifiers and attribute profiles correspond to criteria predetermined by the supplier in order to minimize waste;
>
> (b) third party organizations maintaining a membership database to introduce members of the organizations to a spatial marketplace system as members;
>
> (c) third party organizations introducing members of the organizations to the spatial marketplace system as members;
>
> (d) providing a percentage of revenue to the third party organizations for introducing members of the organizations to the spatial marketplace system;
>
> (e) offering members an incentive in exchange for registering, providing a spatial identifier, nominating attributes corresponding to commodities in relation to which the member consents to receiving offers;

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respective details.

(f) each member registering with the spatial marketplace and entering a physical address defining a geographic region via an Internet browser upon registration to derive a spatial identifier that is stored in the membership database, the spatial identifier comprising a set of coordinates that define a three-dimensional location;

(g) each member nominating one or more attributes corresponding to a commodity in relation to which the member is interested in receiving offers and each member requesting offers the member is interested in receiving;

(h) granting suppliers access to a register of members which are categorized according to their spatial identifiers and attribute profiles via an Internet browser;

(i) using a time nominating component by a processor to specify a point in time and a time interval when the member's request for offers will be presented to suppliers; and

(j) associating a range of numeric qualifiers with one or more attributes relating to the commodity the member is interested in, the numeric qualifiers specifying a quantity, size, or length of the one or more attributes;

(k) restricting the delivery of offers to members associated with the identified database records that have nominated attributes matching attributes nominated by the supplier at the time when the member's request for offers will be presented to suppliers;

(1) further restricting the delivery of offers to members that have nominated the numeric qualifier for the commodity which matches or falls within the range of the numeric qualifiers nominated for the commodity by the supplier; and

(m) targeting members whose spatial identifiers and attribute profiles correspond to criteria predetermined by the supplier.

Rejections

Claims 1 and 2 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 5–8.

ANALYSIS

We have reviewed the rejections of Claims 1and 2 in light of Appellant's arguments that the Examiner erred. We have considered in this decision only those arguments Appellant actually raised in the Briefs. Any other arguments which Appellant could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded that Appellant identifies reversible error. Upon consideration of the arguments presented in the Appeal Brief and Reply Brief, we agree with the Examiner that all the pending claims are unpatentable. We adopt as our own the findings and reasons set forth in the rejection from which this appeal is taken and in the Examiner's Answer, to the extent consistent with our analysis below. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellant's arguments *seriatim*, as they are presented in the Appeal Brief, pages 5–15.

CLAIMS 1 AND 2: NON-STATUTORY SUBJECT MATTER.

Appellant argues these claims generally as a group. *See* App. Br. 5.

35 U.S.C. § 101.

35 U.S.C. § 101 provides that a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The Supreme

Court has long recognized, however, that § 101 implicitly excludes "[l]aws of nature, natural phenomena, and abstract ideas" from the realm of patent-eligible subject matter, as monopolization of these "basic tools of scientific and technological work" would stifle the very innovation that the patent system aims to promote. *Alice Corp. Pty. Ltd. 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)); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294–97 (2012); *Diamond v. Diehr*, 450 U.S. 175, 185 (1981).

Alice Step 1.

The Supreme Court has instructed us to use a two-step framework to "distinguish[] patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 134 S. Ct. at 2355. At the first step, we determine whether the claims at issue are "directed to" a patent-ineligible concept. *Id.*

The Examiner finds Claims 1 and 2 are directed to the abstract idea of providing revenue to a third party organization for introducing members to join the spatial system in accordance with targeting geographic location criteria. Final Act 3. The Examiner finds this abstract idea is similar in concept to that of "creating a contractual relationship," or "comparing new and stored information and using rules to identify options" which the Court has identified as abstract. *Id.* (citing *SmartGene*[3]); *see* Ans. 5.

[3] *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950 (Fed. Cir. 2014) (non-precedential).

Appellant contends the claims address a business challenge that is specific to the internet. App. Br. 7. Appellant argues the internet allows businesses to reach customers globally, but local businesses may wish to only target local traffic. *Id.* Appellant argues that one cannot determine the geographical location of a user from an analysis of the customer's internet contact information (e.g., email address, username), thus determining the geographical location of an internet user is a problem that is unique to the internet, in analogy to the claims at issue in *DDR Holdings.*[4] Reply Br. 2. Appellant further argues that, similar to *Enfish*,[5] the claims improve a database on a server. *Id.*

The Examiner finds the claims do no more than collect, store, display, and compare data, on a generic computer, in furtherance of the fundamental economic practice of advertising to and incentivizing customers. Final Act. 7; Ans. 12, 15. The Examiner further finds the method claims do not purport to improve the functioning of the computer itself, nor do they effect an improvement in any other technology or technical field. Final Act. 7; Ans. 12, 15. Appellant argues the claims improve a database by "registering each member with the spatial marketplace and entering a physical address defining a geographic region via an Internet browser upon registration to derive a spatial identifier that is stored in the membership database, the spatial identifier comprising a set of coordinates that define a three-dimensional location." Reply Br. 3 (analogizing the claims to those of *Enfish*).

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[4] *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).
[5] *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016).

In *Enfish*, the Court found the claims were not simply directed to *any* form of storing tabular data, but instead are specifically directed to a *self-referential* table for a computer database. *Enfish*, 822 F.3d at 1337. However, in contrast to *Enfish*, Appellant, here, characterizes the data that is gathered into the database, but fails to characterize any improvement in the database, per se. Appellant fails to persuade us that the claims are not directed to an abstract idea.

Alice Step 2.

Where, as here, the claims are found to be "directed to" a patent-ineligible concept, we then "consider the elements of each 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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1298, 1297). This analysis has been characterized as the search for an "inventive concept"— something sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.* (quoting *Mayo*, 132 S. Ct. at 1294).

Appellant contends that, as discussed in the Appeal Brief, electronic marketing via the Internet provides rapid and economical access to large numbers of prospective customers, but, that a notable disadvantage of the Internet, i.e., an Internet-centric problem, is that it does not provide a means for effectively identifying and targeting local customers based on geographic location and therefore does not provide a suitable marketing opportunity for businesses relying on a local customer base. Reply Br. 4. Appellant argues the claimed method improves an existing technological process by making it possible to target only users in a specific geographic location. *Id.*

Appellant argues the claims "register[] each member with the spatial marketplace and entering a physical address defining a geographic region via an Internet browser upon registration to derive a spatial identifier that is stored in the membership database, the spatial identifier comprising a set of coordinates that define a three-dimensional location." Reply Br. 3

Appellant describes information. Information, per se, is an intangible. *See Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 451 n.12 (2007).

Accordingly, the courts treat "collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). The claims do not require a new source or type of information, nor new techniques for analyzing it, nor any arguably inventive programming. *See Elec. Power*, 830 F.3d, at 1355. We are not persuaded the claims require significantly more so as to be removed from the ambit of abstract ideas. We, therefore, sustain the rejection of Claims 1 and 2 under 35 U.S.C. § 101.

DECISION

The rejection of Claims 1 and 2 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED