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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID RICE

Appeal 2016-008236
Application 13/657,704
Technology Center 3600

Before HUNG H. BUI, JOYCE CRAIG, and AARON W. MOORE,
Administrative Patent Judges.

MOORE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 3, 6–10, 16–22, and 24–27, which are all of the pending claims.

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

We affirm.

THE INVENTION

The application is directed to “[s]ystems and methods for a supplier dynamic reference.” (Abstract.) Claim 1, reproduced below, is representative:

1. A supplier dynamic reference system comprising:

a processor; and

a memory coupled to the processor, wherein the memory stores instructions, the instructions thereon being executable by the processor to perform operations including,

generate custom code for placement within website code for a supplier’s product webpage, the custom code executable to generate a user interface specific to a supplier;

display product information to a consumer through the user interface on a display of a device accessing the supplier’s product webpage;

determine that the consumer wants to make a purchase of the product of the supplier based on input by the consumer through the user interface;

dynamically generate, in response to receiving the data input by the consumer, a list of resellers of the product of the

¹ This paper is captioned by inventor name according to our pre-AIA convention. The Applicant/Appellant and real party in interest is Omacro, Inc. (*See App. Br. 3.*)

supplier from multiple possible resellers based on predetermined criteria stored in the memory, the predetermined criteria having been selected by the supplier and entered into the system prior to determining that the consumer wants to make a purchase; and

provide the list of resellers to the consumer through the user interface, wherein the list of resellers includes data about each reseller on the list of resellers,

wherein multiple different suppliers can access and use the supplier dynamic reference system for different products and select different predetermined criteria for each of the different products, and wherein the system can dynamically generate different lists of resellers for different products based on the different predetermined criteria.

THE REJECTION

Claims 1, 3, 6–10, 16–22, and 24–27 stand rejected under 35 U.S.C. § 101 “because the claimed invention is directed to non-statutory subject matter.” (*See* Final Act. 2–3.)

ANALYSIS

The Examiner finds the pending claims “directed to systems for selecting a reseller, which is considered to be an abstract idea.” (Final Act. 2.) The Examiner further finds that “when considering the elements and combinations of elements, the claims as a whole do not amount to significantly more than the abstract idea itself” because “the claims do not amount to an improvement to another technology or technical field, or to the functioning of a computer itself” and “the claims do not move beyond a general link of the use of an abstract idea to a particular technological environment.” (*Id.* at 2–3.)

Appellant offers a series of arguments as to why the claims should be eligible for patenting, which we address in the order presented.

First, Appellant argues “the pending claims are directed to a machine, which is a statutory category of invention.” (App. Br. 7.) This is not persuasive because it is well settled that an applicant may not circumvent the prohibition on the patenting of abstract ideas simply by drafting claims to include generic computer hardware. *See Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2359 (2014) (explaining that allowing claims to a computer system configured to implement an abstract idea “would make the determination of patent eligibility ‘depend simply on the draftsman’s art,’” thereby eviscerating the rule that ‘laws of nature, natural phenomena, and abstract ideas are not patentable’”) (citations omitted).

Second, Appellant argues “[t]he claimed inventions are not abstract because they are specifically rooted in internet technology and provide improvements particular to internet technology.” (App. Br. 8.) We do not agree. The claims use a computer and the internet as a vehicle for implementing the abstract idea of providing a buyer with a list of potential resellers. Although the claims are cast in the context of a website and webpages, and recite a technique for adding a feature to a website (providing a list of resellers) the subject matter is not an improvement in computer or internet technology itself. Put another way, we, like the Examiner, find the claims directed to a conventional business process (providing potential customers a place to buy products) facilitated by conventional computer components, not as a fundamentally new way to use computers or the internet. For that reason, we do not agree with Appellant that this case is like *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir.

2014). The claims in *DDR* were directed to a virtual store within a virtual store concept that had no brick and mortar analogue and was determined to be a fundamentally new way to operate in the Internet environment. Appellant's claims, on the other hand, simply provide a list of resellers to a potential customer, an entirely conventional sales concept (telling someone where they can buy something) that does not require any fundamentally new or different hardware or software techniques for its implementation.

Third, Appellant argues that "the subject matter of the pending claims involve 'significantly more' than merely selecting a reseller" as they "involve improvements to the functioning and management of suppliers' websites and information presented on websites, and improvements to online purchasing functions" and because they "include meaningful limitations that go far beyond merely linking the use of an abstract idea to a technological environment." (App. Br. 10.) We do not agree. As explained above, the claims are directed to a method evidently implemented with conventional web programming techniques on standard hardware arranged in the usual way.

Fourth, Appellant asserts that "the claims do not seek to monopolize or preempt 'selecting a reseller' as a general concept." (App. Br. 13.) This is not a persuasive argument because, although "preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). "Where a patent's claims are deemed only to disclose patent ineligible subject matter" under the *Alice/Mayo* framework, "preemption concerns are fully addressed and made moot." *Id.*

Fifth, Appellant argues that the Examiner “has not provided support for rejecting claims 3, 5–10, 16, 17, 19–22 and 24–26” and that “in view of this lack of factual evidence . . . the Office has not met its burden of establishing claims 3, 5–10, 16, 17, 19–22, and 24–26 are directed to non-statutory patent-eligible subject matter and fail to include more than an abstract idea.” (App. Br. 13.) We find this argument unpersuasive because the USPTO carries its procedural burden when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original, quoting 35 U.S.C. § 132). Here, the Examiner notified Appellant that the claims are directed to an ineligible abstract idea, specifically, to the idea of “selecting a reseller,” where “the claims do not move beyond a general link of the use of an abstract idea to a particular technological environment.” (Final Act. 3.) Thus, Appellant has been notified of the reasons for the rejection with such information “as may be useful in judging of the propriety of continuing the prosecution of [the] application,” which is all that is required.

Finally, Appellant quotes portions of dependent claims 6, 20, 21, 22, and 25, alleged to be “limitations that are also necessarily rooted in the technology and are not abstract ideas and/or add significantly more than merely an abstract idea.” Appeal Br. 13. We do not agree that the identified limitations of these dependent claims, concerning features such as “code snippets” and “predetermined criteria” evidence an inventive step.

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Because Appellant's arguments do not persuade us of error, we sustain the Section 101 rejection of claims 1, 3, 6–10, 16–22, and 24–27.

DECISION

The rejection of claims 1, 3, 6–10, 16–22, and 24–27 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