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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CASEY HUKU and WILLIS LEE FLAHERTY

Appeal 2016-008514
Application 13/614,257¹
Technology Center 2100

Before DEBRA K. STEPHENS, ADAM J. PYONIN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from a Non-Final Rejection of claims 1, 3, and 6–19, which are all of the pending claims. *See* Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The real party in interest is identified as Casey Huke. Br. 2.

STATEMENT OF THE CASE

Introduction

The Application is directed to a “system for planning, managing, and analyzing sports teams and events,” including “sports-related events such as practices and games.” Abstract. Claim 1, the sole independent claim, is reproduced below for reference:

1. A sports management system, comprising:
 - a user interface;
 - a processor;
 - a memory; and
 - a management module stored on the memory, wherein the management module is configured to receive and store data input by the user relating to sports plays and the results of implementing the sports plays, wherein the data relating to sports plays and the results of implementing the sports plays is associated with attributes including play, play formation, play goal, play effectiveness, player personnel package, and situational data;
 - analyze the data input by the user;
 - provide the user with feedback and suggestions based on the analysis conducted;
 - determine and record a play effectiveness of a most recent play by comparing a play result with the play goal and considering the situational data;
 - automatically updating the data relating to sports plays and the results of implementing sports plays in real time to include the play effectiveness of the most recent play; and
 - generating at least one report of a subgroup within said player personnel package, wherein said subgroup includes at least one personnel group representing a plurality of players, and wherein said at least one report includes at least one action in which the at least one personnel group were involved and a result of the at least one action.

References and Rejections

The following is the prior art relied upon by the Examiner in rejecting the claims on appeal:

Jacobson	US 4,953,873	Sept. 4, 1990
Lore	US 2008/0051201 A1	Feb. 28, 2008
Seacat	US 2008/0140233 A1	Jun. 12, 2008
Fleming	US 2010/0137057 A1	June 3, 2010
Koivisto	US 2011/0183734 A1	July 28, 2011

Three Things Every Football Coach Should Know, Buddy Kite, Esquire Magazine, Dec. 1, 2006 (hereafter, “Kite”).

Claims 1, 3, and 6–19 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. *See* Non-Final Act. 3.

Claims 1, 3, 6–13, and 15–19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Seacat, Kite, Lore, Fleming, and Koivisto. *See* Non-Final Act. 4–5.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Seacat, Kite, Lore, Fleming, Koivisto, and Jacobson. *See* Non-Final Act. 18.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments. Any other arguments Appellants 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) (2012); *cf Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (The Board may treat arguments Appellant failed to make for a given ground of rejection as waived). We are not persuaded the Examiner

erred; we adopt the Examiner’s findings and conclusions as our own, and we add the following primarily for emphasis.

A. 35 U.S.C. § 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (internal citation and quotation marks omitted). The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66, 79 (2012), “for distinguishing 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. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” e.g., to an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, the inquiry proceeds to the second step, where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant

technology, or instead are directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Appellants argue the Examiner erred in concluding the claims are patent-ineligible, because “[t]he claims do not recite a basic concept that is similar to any abstract idea previously identified by the courts.” Br 5. Appellants argue that, “[i]nstead, the claims are directed toward improving a specific technological area to overcome a problem specifically arising in managing and analyzing sports teams and events” and therefore “are not directed to a judicial exception” under 35 U.S.C. § 101. *Id.*

We are not persuaded the Examiner erred. Appellants’ arguments are directed to claim 1, which recites a sports management system comprising computer equipment and configured to receive sports-related data, analyze the data, and provide reports, feedback, and suggestions relating to the data. *See* Br. 4; *see also* Non-Final Act. 3–4. Thus, we determine the claims are not directed to improving a specific technological area. *See* Br. 5. Instead, we agree with the Examiner that “the claimed invention is to improve the chances of a victory in a sports competition” (Ans. 20) using a “computerized scheme for managing sports plays,” which is directed to the abstract concept of organizing human activity (Non-Final Act. 3).

We determine the Examiner’s position is supported by case law, as our reviewing court has held claims similarly directed to certain methods of organizing human activity to be abstract ideas. *See, e.g., Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (collecting, analyzing, and displaying certain results of the collection and analysis); *Accenture Global Services, GmbH v. Guidewire Software*, 728 F.3d 1336,

1344 (Fed. Cir. 2013) (generating task based rules based on an event); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed. Cir. 2009) (structuring a sales force or marketing company); *Planet Bingo, LLC v. VKGS, LLC*, 576 Fed.App'x 1005 (Fed. Cir. 2004) (managing a game of bingo); *In re Maucorps*, 609 F.2d 481 (CCPA 1979) (using an algorithm for determining the optimal number of visits by a business representative to a client).

Further, we determine the technological features recited by the claim—including the processor and memory—do not add any inventive concept, as the recited limitations are to “only a generic computer performing generic computer functions.” *Ans. 21*; *see In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 612 (Fed. Cir. 2016) (“the claims here are not directed to a specific improvement to computer functionality. Rather, they are directed to the use of conventional or generic technology in a nascent but well-known environment, without any claim that the invention reflects an inventive solution to any problem presented by combining the two.”).

Thus, we are not persuaded the Examiner erred in determining the claims are directed to an abstract concept. Appellants do not challenge the Examiner’s concluding that the “additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself.” *Non-Final Act. 4*. Accordingly, we sustain the Examiner’s rejection of the claims as being non-statutory under 35 U.S.C. § 101. *See Ans. 21*.

B. 35 U.S.C. § 103(a)

Appellants argue the Examiner erred in rejecting independent claim 1 as obvious in view of the cited references, because “[n]one of the cited references, even when considered in combination, teach or suggest each and every limitation of claim 1.” Br. 6. Appellants further argue both Lore and Fleming are directed toward fantasy sports, whereas “[t]he present invention is not a fantasy based contest.” *Id.* 8–9.

Appellants’ arguments are unpersuasive of error because they attack the references individually, and thus, fail to address the Examiner’s findings. *See* Br. 6–11; *see also In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.”). Appellants argue the teachings of the individual references, but do not proffer sufficient evidence or argument to persuade us the Examiner erred in finding the limitations of claim 1 to be taught or suggested by the combined teachings of the references.

Appellants appear to be arguing each reference as a whole would not be incorporated into the system of Seacat by an ordinarily skilled artisan. However, the Examiner is relying on teachings from each reference and not combining the entire systems of each reference.

To justify combining reference teachings in support of a rejection it is not necessary that a device shown in one reference can be physically inserted into the device shown in the other. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of

the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.2d 413, 425 (CCPA 1981) (citations omitted).

Accordingly, we are not persuaded the Examiner erred in finding the combination of Seacat, Kite, Lore, Fleming, and Koivisto teaches or suggests the limitations of independent claim 1. *See* Non-Final Act. 10; *see also* Seacat Fig. 2, ¶¶ 7, 21, 27; Kite 1–2; Lore ¶ 43; Fleming ¶ 16; Koivisto Figs. 36–42; ¶ 231. We sustain the Examiner’s obviousness rejection of claim 1, and of claims 3, 6–13, and 15–19, not separately argued. *See* Br. 11. Appellants argue Jacobson, cited in the rejection of dependent claim 14, does not cure the deficiencies of Seacat, Kite, Lore, Fleming, and Koivisto, but do not otherwise present separate patentability arguments. *See* Br. 10. Thus, we sustain the Examiner’s obviousness rejection of dependent claim 14 for the reasons provided above with respect to independent claim 1.

DECISION

The Examiner’s decision rejecting claims 1, 3, and 6–19 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