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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY HARRISON

Appeal 2016-008740
Application 12/233,491
Technology Center 3600

Before: JOSEPH L. DIXON, ELENI MANTIS MERCADER, and JASON M. REPKO, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 5–8, 11–13, 17, and 19–21. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to method for a contextual, vector-based content-serving system. Claim 5, reproduced below, is illustrative of the claimed subject matter:

> 5. A computer-implemented method for analyzing a webpage and inserting ad content based on the analysis, comprising:
>
> creating, at a server, one or more context buckets;
>
> producing, at the server, a list of terms based on content in the one or more context buckets;
>
> creating, at the server, a plurality of context vectors for the one or more context buckets based on the content in the one or more context buckets and the list;
>
> transmitting, from the server to a client device, the plurality of context vectors and a set of instructions configured to cause a web browser application executing on the client device to perform operations comprising:
>
> determining a context of a webpage accessed by the web browser application,
>
> wherein determining the context of the webpage includes generating a webpage vector and comparing the webpage vector to one or more of the plurality of context vectors to determine one or more context vector among the plurality of context vectors that most closely matches the webpage vector; and
>
> transmitting context data indicative of the one or more context vector that most closely matches the webpage vector to the server; and
>
> transmitting to the web browser application executing on the client device ad content related to the context data transmitted from the client device.

REFERENCES

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

THE REJECTION

Claims 5–8, 11–13, 17, and 19–21 stand rejected under 35 U.S.C § 101 as being directed to non-statutory subject matter.

ANALYSIS

Appellant argues that the Examiner's rejection of claims 5–8, 11–13, 17, and 19–21 under 35 U.S.C § 101 should be reversed on grounds that the claims are not directed to a fundamental economic practice and, thus, do not include an abstract idea (App. Br. 8). Appellant asserts that the claims in the present application are similar to and directly analogous to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.,* No. 13-1505 (Fed. Cir. 2014), which were found to be patent-eligible by the Federal Circuit (App. Br. 8). Appellants argue that similar to *DDR Holdings,* while the claims "address a business challenge (retaining website visitors), it is a challenge particular to the Internet" that is not a fundamental economic practice. *id.* Appellant argues that even assuming *arguendo* that the pending claims are directed to "analyzing a webpage" and "inserting ad content," neither "analyzing a webpage" nor "inserting ad content in a Webpage" are a fundamental economic or longstanding commercial practice, as was at issue in *Alice*. *id.*

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). We must first determine whether the claim 1 is "directed to" a patent-ineligible abstract idea. *See id.* at 134 S. Ct. at 2356 ("On their face, the claims before us are

drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk."); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk."); *Parker v. Flook*, 437 U.S. 584, 594–595 (1978) ("Respondent's application simply provides a new and presumably better method for calculating alarm limit values").

Examples of patent-ineligible subject matter include fundamental economic practices (*Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611), mathematical formulas (*Flook*, 437 U.S. at 594–95) and basic tools of scientific and technological work (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)).

We are not persuaded by Appellant's argument. 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 Corp. Pty. Ltd. v. CLS Bank Int'l,* 134 S. Ct. 2347, 2355 (2014). Appellant's claim 5 is directed to a computer-implemented process for analyzing a webpage by determining the context of the webpage including generating a webpage vector and comparing the webpage vector to one or more of the plurality of context vectors to determine one or more context vector among the plurality of context vectors that most closely matches the webpage vector (*see* claim 5). However, contrary to Appellants' argument, claim 5 stops short of positively reciting in the body of the claim, *inserting* the ad content based on the mathematical context vector analysis (*see* App. Br. 8). Thus, in essence the claim recites a mathematical manipulation of data ending with a different set of data. Our reviewing Court has held that "[a] process that started with data, added an algorithm, and ended with a new form of data was directed to an abstract idea." *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327

(Fed. Cir. 2017) (citing *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014)). Accordingly, we find that claim 5 and dependent claims are directed to an abstract idea.

Because we conclude all claims on appeal are directed to an abstract idea, we proceed to the second part of the *Mayo/Alice* analysis. We further analyze the claims to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to "significantly more" than the abstract idea. *Alice*, 134 S. Ct. at 2357.

The additional elements of the recited computer, server, and web browser are conventional (*see* claim 5). The claims are similar to the claims of *Electric Power*, because they do not require any nonconventional computer or network components, or even a "non-conventional and non-generic arrangement of known, conventional pieces," but merely call for performance of the claimed information collection and analysis functions on generic computer components. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016).

Accordingly, for at least the reasons discussed above, we sustain the Examiner's rejection under 35 U.S.C. § 101 of claim 5 and for similar reasons the rejections of claims 6–8, 11–13, 17, and 19–21, as being directed to patent-ineligible subject matter.

CONCLUSION

The Examiner did not err in finding claims 5–8, 11–13, 17, and 19–21 as being directed to non-statutory subject matter.

DECISION

The Examiner's rejection of claims 5–8, 11–13, 17, and 19–21 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED