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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIC PASSMORE, SUDHIR ACHUTHAN,
SEAN CHRISTOPHER TIMM,
TRAVIS ADAM WALKER, and VINEET MAHAJAN

Appeal 2017-000087
Application 12/845,307
Technology Center 3600

Before CARLA M. KRIVAK, AMBER L. HAGY, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–28, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention is directed to systems and methods for managing electronic content, and specifically to information processing, electronic content generation, and electronic advertising over the Internet. Spec. ¶ 1. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A computer-implemented method for managing electronic content on a website, the method including:

receiving, over an electronic network, log data of activities by Internet users;

filtering, by at least one processor, the log data based on at least one aspect of the activities;

aggregating, by the at least one processor, the filtered log data by a predetermined period of time;

calculating a trend concerning one or more keywords associated with the aggregated log data, based on a change in a volume of the activities;

presenting to an editor of the website, over the electronic network, an editorial console including a the topic associated with the calculated trend and metadata related to the topic;

determining, by the at least one processor, desired electronic content relating to the topic associated with the calculated trend;

predicting, by the at least one processor, traffic resulting from providing the desired electronic content on the website;

determining, based at least on the predicted traffic associated with providing the desired electronic content, a monetary value to pay a content contributor for submissions of the desired electronic content; and

distributing a request for the desired electronic content, over the electronic network, to solicit submissions from the content contributor, the request specifying the monetary value for submissions.

REJECTIONS

Claims 1–28 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception to statutory subject matter.

Claims 1–5, 7–11, 13–18, and 20–28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ketchum et al. (US 2010/0198655 A1; published Aug. 5, 2010) (“Ketchum”), Marcia Yudkin, *From Writer to Content Provider*, (1999, 2001), downloaded from <http://www.yudkin.com/content.htm> on 18 April 2015 (“Yudkin”), and Grouf et al. (US 2009/0144129 A1; published June 4, 2009) (“Grouf”).¹

Claims 6 and 19 stand alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ketchum, Yudkin, Grouf, and Druzgalski et al. (US 2010/0100537 A1; published April 22, 2010) (“Druzgalski”).

Claim 12 stands alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ketchum, Yudkin, Grouf, and Redlich (US 2009/0327057 A1; published Dec. 31, 2009) (“Redlich”).

¹ Although the heading on page 7 of the Final Office Action states claims 16–26 are rejected under 35 U.S.C. § 103(a), pages 22–23 of the Final Action discuss the rejection of claims 27 and 28. We consider this oversight in the heading harmless error as Appellants understands claims 16–28 are included in this rejection (*see* App. Br. 10, 22).

ANALYSIS

35 U.S.C. § 101 Rejections

We have reviewed the Examiner’s rejection in light of Appellants’ arguments in the Briefs. For the reasons discussed below, as well as the reasons provided by the Examiner in the Final Rejection (Final Act. 3–7, 28–33) and the Examiner’s Answer (Ans. 2–18), we are not persuaded by Appellants’ arguments that the Examiner erred in rejecting claims 1–28 under 35 U.S.C. § 101. Although we make the following points for emphasis, the Examiner has provided a thorough and comprehensive analysis of the issues raised by Appellants, and we therefore adopt the Examiner’s analysis in that regard (Final Act. 3–7, 28–33; Ans. 2–18) as our own. *See, e.g., In re Paulsen*, 30 F. 3d 1475, 1478 n.6 (Fed. Cir. 1994).

To determine whether a claim is eligible under § 101, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). If it is, 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.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)).

In the first step of the *Alice* analysis, the Examiner determines the claims are directed to the abstract idea of paying a content contributor for submissions of desired content, a fundamental economic practice and/or method of organizing human activities. Final Act. 3–7; *see also* Ans. 3–4 (“to solicit popular or trendy content from contributors”). In the second step of the *Alice* analysis, the Examiner determines the claims do not recite

significantly more than the abstract idea itself, and are merely instructions to implement the abstract idea on a generic computer. Final Act. 3–7, 30–33; *see also* Ans. 4–18.

Appellants argue there is no case law addressing a similar abstract idea and “no evidence to support that the claims are merely directed to ‘organizing human activities.’” App. Br. 11–12; *see also* Reply Br. 3–4. Appellants further argue the claims “do not threaten to monopolize or ‘pre-empt’ a well-known idea or concept” because “there are numerous ways to use or implement the supposed alleged abstract idea without practicing the pending claims.” App. Br. 12; *see also* Reply Br. 4–5.

We agree with the Examiner that the claims are directed to an abstract idea. Claim 1 generally recites the steps of receiving log data of activities by Internet users, filtering the log based data on at least one aspect of the activities, aggregating the filtered log data by a predetermined period of time, calculating a trend concerning one or more keywords associated with the aggregated log data, presenting to an editor the topic associated with the calculated trend and metadata related to the topic, determining desired electronic content relating to the topic associated with the calculated trend, predicting traffic resulting from providing the desired electronic content on the website, determining a monetary value to pay a content contributor for submissions of the desired electronic content, and distributing a request for the desired content to solicit submissions from the content contributor. Independent claims 13 and 15 recite similar limitations. Appellants describe the invention as including “managing electronic content, determining topics in high demand, calculating the value of electronic content, and requesting electronic content from users, such as over the Internet.” Spec. ¶ 6.

Although the claims describe using a computer to perform Appellants' method, we agree with the Examiner that the recited steps are directed to the performance of basic human activities that have been performed for years, particularly in the news industry. *See* Ans. 5–9; *e.g.*, *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

Moreover, Appellants' invention is not meaningfully different from other claims found abstract by our reviewing court. *See, e.g.*, *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (claims directed to collection, manipulation, and display of data); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (customizing information and presenting it to users based on particular characteristics); *Content Extraction and Transmission LLC v. Wells Fargo Bank, National Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“collecting data, . . . recognizing certain data within the collected data set, and . . . storing that recognized data in a memory”); *Cyberfone Systems, LLC v. CNN Interactive Grp, Inc.*, 558 F. App'x 988, 992 (Fed. Cir. 2014) (nonprecedential) (“using categories to organize, store, and transmit information is well-established”).

Appellants' preemption argument is likewise unpersuasive of Examiner error. Although preemption “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*Alice*, 134 S. Ct. at 2354 (citing *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012))), “the absence of complete preemption does not demonstrate patent eligibility.”

Ariosa Diagnostics, Inc. v. Sequenom, Inc., 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Turning to the second step of the *Alice* analysis, Appellants argue “the claims are ‘improvements to another technology or technical field’” because the claims “improve at least the fields of managing web traffic and electronic content, by providing computerized solutions for determining topics in high demand, calculating the value of electronic content to such topics, and requesting electronic content over the Internet.” App. Br. 14; *see also* Reply Br. 6. According to Appellants, these improvements were needed “because conventional methods and techniques are unable to, among other things, manage large quantities of electronic content and process high volumes of online data to efficiently determine trends, pricing, etc.” App. Br. 14. Citing to *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245 (Fed. Cir. 2014), Appellants also argue the claims “overcome a problem specifically arising in the realm of computer networks.” App. Br. 15. Appellants argue that, like the claims in *DDR Holdings*, Appellants’ claims “yield a ‘result that overrides the routine and conventional sequence of events,’ to address a technical problem of which there is no ‘conventional’ counterpart.” App. Br. 16.

Appellants have not directed our attention to anything in the record that shows, nor can we find, any specialized computer hardware or other “inventive” computer components are required. *See* Spec. ¶¶ 77–85. Rather than reciting additional elements that amount to “significantly more” than

the abstract idea, the pending claims, at best, add only a “electronic network,” “processor,” “editorial console,” and “server,” i.e., generic components (*see* Spec. ¶¶ 77–85), which do not satisfy the inventive concept. *See, e.g., DDR Holdings*, 773 F.3d at 1256 (internal quotation marks omitted) (“[A]fter Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point.”). Rather, conventional elements of a generic computer system are employed for their inherent functions to perform as expected; that is, receiving, filtering, aggregating, calculating, presenting, determining, predicting, and distributing types of information.

Nor have Appellants adequately shown why the claimed invention “address[es] a technical problem of which there is no ‘conventional’ counterpart” or effects “improvements to another technology or technical field.” *See* App. Br. 14, 16. Appellants’ alleged improvement is in the automation of the abstract idea, which is insufficient to confer patent eligibility. *See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent-eligible). Moreover, as the Examiner points out, Appellants’ claims do not require large volumes of quantity or data. Ans. 14. As such, the claims amount to nothing

significantly more than an instruction to implement the abstract idea on a generic computer – which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 1–28.

35 U.S.C. § 103 Rejections

Appellants argue Yudkin is not prior art to the claimed invention. App. Br. 17. According to Appellants, the Examiner does not “present[] any evidence that the April 18, 2015, downloaded and cited version of the website for *Yudkin* was publically available prior to the filing date of the present application, which is July 28, 2010.” App. Br. 17–18; *see also* Reply Br. 9. Appellants argue because “[t]he content of websites can be updated or modified over time, irrespective of copyright notices or dates . . . there is no evidence of record that affirms what content was publicly available on the URL . . . of *Yudkin* prior to July 28, 2010.” App. Br. 18; *see also* Reply Br. 9. Appellants argue the last modified date for Yudkin is September 14, 2015. App. Br. 18; *see also* Reply Br. 10.

The Examiner finds the content of Yudkin indicates a copyright date of 2001, and the Examiner was unable to find any evidence that would appear to invalidate that date provided on Yudkin itself. Ans. 18–19. The Examiner further finds that a Google search indicates a creation date of February 1, 2001 and another indexing date of October 7, 2007 for the Yudkin reference. Ans. 19–20.

The Yudkin reference is an article titled “From Writer to Content Provider” written by Marcia Yudkin, and available on her website,

www.yudkin.com. At the bottom of the Yudkin reference it states “Copyright 2001 Marcia Yudkin.” We agree with the Examiner that the Yudkin reference’s copyright date of 2001, along with the Google creation date of February 1, 2001, and indexing date of October 7, 2007, for that page,² adequately indicates that the Yudkin reference was publicly available before the July 28, 2010, filing date. Appellants present no countervailing evidence suggesting changes to the content of the Yudkin reference itself, rather than to the web page generally. For example, the web page the Yudkin reference is located on (www.yudkin.com/content.htm) also includes sidebars on the left and right side of the page, which include links to books by the author, a place to subscribe to the author’s marketing newsletter, and links to other pages on the web site. Although Appellants indicate a last modified date of the web page of September 14, 2015, there is no indication that the content of the reference article has changed, as opposed to the information located in the sidebars of the page.³ Accordingly, Appellants have not sufficiently shown the Examiner erred.

Appellants also argue Yudkin does not teach or suggest “predicting, by the at least one processor, traffic resulting from providing the desired electronic content on the website,” “determining . . . a monetary value to pay a content contributor,” and “distributing a request for the desired electronic content, over the electronic network,” as recited in independent claim 1.

² Although Appellants indicate they were unable to replicate the Examiner’s Google search (App. Br. 18, Reply Br. 10), we were able to do so by following the instructions as set forth by the Examiner on pages 19 and 20 of the Answer.

³ We note the information currently showing in the left sidebar differs from the information showing in the left sidebar when the reference was downloaded by the Examiner on April 14, 2015.

App. Br. 20, emphasis omitted. Specifically, Appellants argue Yudkin is “limited primarily to a listing of content types with associated examples of how others have made money providing such content.” App. Br. 20; *see also* Reply Br. 12. Appellants argue Grouf fails to cure the deficiencies of Yudkin, and Ketchum does not explicitly disclose the disputed limitations. App. Br. 19–21; *see also* Reply Br. 11–13.

We are not persuaded by Appellants’ arguments. The Examiner relies on the combination of Ketchum, Yudkin, and Grouf to teach or suggest the three disputed limitations. Final Act. 8–10; Ans. 21–24. Although the Examiner finds Ketchum fails to explicitly teach or suggest the three disputed limitations, the Examiner finds “Ketchum is actually rather close” and comprehensively explains how the combination of Ketchum, Yudkin, and Grouf teaches or suggests the disputed limitations. Ans. 21–24. We agree with and adopt the Examiner’s findings. Appellants’ arguments directed to Yudkin alone are insufficient to persuasively rebut the Examiner’s findings.

Accordingly, we are not persuaded the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103, and, therefore, we sustain the Examiner’s rejection. For the same reasons, we sustain the Examiner’s 35 U.S.C. § 103 rejection of independent claims 13 and 15, which recite similar limitations, and dependent claims 2–12, 14, and 16–28, which were not separately argued.

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DECISION

The Examiner's 35 U.S.C. § 101 rejection of claims 1–28 is affirmed.

The Examiner's 35 U.S.C. § 103 rejection of claims 1–28 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