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KILPATRICK TOWNSEND & STOCKTON LLP/VISA
Mailstop: IP Docketing - 22
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDRES POLO

Appeal 2017-000096
Application 13/732,166[1]
Technology Center 3600

Before TERRENCE W. McMILLIN, KARA L. SZPONDOWSKI, and SCOTT B. HOWARD, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1–6, 8, 9, 11–16, 18, 19, and 21–24. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] According to Appellant, the real party in interest is Visa International Service Association. App. Br. 2.

THE CLAIMED INVENTION

The present invention relates to "delivering services, promotions, and information to cardholders using portable electronic devices." Spec. ¶ 8. Independent claim 1 is directed to a method and independent claim 11 is directed to a device. App. Br. 35, 37.

Claim 1, reproduced below, is representative of the claimed subject matter:

> 1. A method comprising:
>
> receiving, by a portable electronic device, a plurality of offers from a first server computer over an internet connection, the plurality of offers including global offers and local offers;
>
> determining, by a processor of the portable electronic device, a location of the portable electronic device using a GPS receiver of the portable electronic device;
>
> receiving, by the portable electronic device over the internet connection, concierge data including a travel itinerary with at least one of a hotel reservation, restaurant reservation, and travel arrangement, from a second server computer associated with a concierge service provider that previously scheduled the at least one of the hotel reservation, the restaurant reservation, and the travel arrangement on behalf of a user, wherein the concierge data is associated with the user of the portable electronic device;
>
> determining, by the processor of the portable electronic device, based on the concierge data, one or more future locations associated with the user of the portable electronic device by:
>
> interpreting, by the processor of the portable electronic device, the travel itinerary to identify when and where the user will be located by determining a future location and a future time for each of the at least one hotel reservation, restaurant reservation, and the travel arrangement in the travel itinerary and mapping each of the future locations of the user on a timeline

according to the location and the time of each of the at least one hotel reservation, restaurant reservation, and travel arrangement in the travel itinerary; and

storing, by the processor of the portable electronic device, each of the future locations and each of the times associated with each of the future locations and the timeline for use in filtering of the plurality of offers;

filtering, by the processor of the portable electronic device without using the internet connection, the plurality of offers according to the location of the portable electronic device, the one or more future locations, and the timeline by:

determining a relevance score for each offer of the plurality of offers, wherein higher relevance scores are provided to the local offers and offers associated with the one or more future locations according to the timeline, wherein the relevance score for each offer of the plurality of offers changes according to the location of the portable electronic device and a present time on the timeline; and

ordering the plurality of offers according to the relevance score for each offer of the plurality of offers;

presenting the filtered plurality of offers to the user of the portable electronic device;

receiving a selection of one of the filtered plurality of offers from the user; and

transmitting, by the processor of the portable electronic device, a selected offer to the first server computer over the internet connection, wherein the first server computer redeems the offer for the user by communicating with a provider associated with the selected offer.

REJECTIONS ON APPEAL

Claims 1–6, 8, 9, 11–16, 18, 19, and 21–24 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Ans. 2.

Claims 1–6, 8, 9, 11–16, 18, 19, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brunner et al. (US 2009/0150218 A1; published June 11, 2009) ("Brunner"), Soroca et al. (US 2012/0173366 A1; published July 5, 2012) ("Soroca"), Beck et al. (US 2002/0178126 A1; published Nov. 28, 2002) ("Beck"), and Shaffer et al. (US 8,160,614 B2; issued Apr. 17, 2012) ("Shaffer"). Ans. 3.

Claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brunner, Soroca, Beck, Shaffer, and Moadus et al. (US 8,452,706 B1; issued May 28, 2013) ("Moadus"). Ans. 10.

Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Brunner, Soroca, Beck, Shaffer, Moadus, and Shekar et al (US 2013/0103496 A1; published 25, 2013) ("Shekar"). Ans. 11.

ANALYSIS

35 U.S.C. § 101 Rejections

Alice Corp. Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under 35 U.S.C. § 101. In the first step, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept." *Alice*, 134 S. Ct. at 2355.

The Examiner concludes the claims are directed to the abstract ideas of: "a digital concierge application," "receiving and comparing new and stored information, and using rules to identify options" similar to the claims in *SmartGene*, and "receiving, storing and processing data" similar to the claims in *Alice*. Ans. 13–14; *see also SmartGene, Inc. v. Advanced*

Biological Labs., SA, 555 F. App'x. 950 (Fed. Cir. 2014); *Alice*, 134 S. Ct. 2347.

Appellant argues the claims are "not directed to *any* method of 'receiving and compared new and stored information, and using rules to identify options,'" and instead "are specifically directed to receiving concierge data including a travel itinerary having hotel/restaurant/travel reservations for a user, determining future locations of the user based on the travel itinerary, and off-line filtering of offers for the user based on the future locations." Reply Br. 3.

We are not persuaded by Appellant's arguments. Claim 1 recites a method comprising (1) receiving offers/promotions/advertisements at a phone, (2) receiving data associated with reservations and travel arrangements at the phone, (3) determining the location of the phone, (4) analyzing received data and the phone's location and determining future locations of the phone, (5) filtering the offers/promotions/advertisements by analyzing the received data, phone's location, and future locations, and (6) receiving, selecting, and transmitting the filtered offers/promotions/advertisements. Independent claim 11 recites similar limitations.

We agree with the Examiner that the claims are directed to the abstract idea of "receiv[ing] offers and concierge data (receiving data/information), determin[ing] offers based on relevance score and timeline (compares new and stored information), and determin[ing] offers based on customer location and calculated score (uses rules to identify options)." Ans. 13 (citing *SmartGene*, 555 F. App'x. 950 ("the mental steps of comparing new and stored information and using rules to identify . . .

options" are directed to an abstract idea)). As the Examiner finds, the claims are directed to "presenting the offers, receiving a selection and transmitting the selected offer," which is an "economic activity that is performed over a computer network." Ans. 14 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) ("Although certain additional limitations, such as consulting an activity log, add a degree of particularity, the concept embodied by the majority of the limitations describes only the abstract idea of showing an advertisement before delivering free content"), *vacated and remanded*, *WildTangent, Inc. v. Ultramercial, LLC*, 134 S. Ct. 2870 (2014) (remanding for consideration in light of *Alice*, 134 S. Ct. 2347)).

Here, the claims are directed to organizing human activity, namely delivering user-selected offers and promotions, which is an abstract idea. *See Affinity Labs of Texas, LLC v. Amazon.com, Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016) ("delivering user-selected media content to portable devices" is directed to an abstract idea). The claims involve nothing more than receiving, storing, and analyzing data, activities that fit squarely within the realm of abstract ideas. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) ("collecting information, analyzing it, and displaying certain results of the collection and analysis," and "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category."). Moreover, Appellant has not adequately shown the claims are not directed to an abstract idea.

Further, we are not persuaded by the Appellant's argument that the claims are not directed to an idea itself, but rather are rooted in computer technology, providing a specific improvement in computer functionality, and

necessitating an underlying computer device with steps that cannot be implemented using a human activity or with paper and pencil. App. Br. 12–14. Our reviewing court has found that if a method can be performed by human thought, these processes remain unpatentable even when automated to reduce burden to the user. *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*, [409 U.S. 63 (1972)].").

In the second step of *Alice*, we "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 Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–80 (2012)). In other words, the second step is to "search for an 'inventive concept' – *i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (quoting *Mayo*, 566 U.S. at 71–73).

Appellant argues the claimed solution provides useful improvements in the field of processing and filtering offers relevant to travel plans while the travelers are traveling, amounting to significantly more than an abstract idea. App. Br. 16. Appellant further argues the claimed receiving concierge data by the portable electronic device and filtering the offers by the portable electronic device without using the internet connection are not well-understood, routine, or conventional steps. App. Br. 16–17.

We are not persuaded by Appellant's argument and agree with the Examiner's findings and conclusions. *See* Ans. 14–16, 18. Appellant has not adequately explained how or provided persuasive evidence to show why the claims are performed such that they are not routine and conventional functions of a generic computer.

We agree with the Examiner that the limitations "computeriz[e]/automat[e] abstract ideas and apply[] them to general purpose hardware/software," which are still directed to abstract ideas without "significantly more" than the abstract idea. Ans. 18. Appellant has 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. ¶ 33. Rather than reciting additional elements that amount to "significantly more" than the abstract idea, the pending claims, at best, add only "portable electronic devices include mobile phones (e.g., cellular phones), PDAs, tablet computers, net books, laptop computer, personal music player, hand-held specialized readers, etc.," and a processor of a portable electronic device, i.e., generic components (Spec. ¶ 33), which does not satisfy the inventive concept. *See*, *e.g.*, *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (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.").

The claims are also distinguishable from those in *DDR*. In *DDR*, the Federal Circuit found that the challenged claims were eligible because they "specif[ied] how interactions with the Internet are manipulated to yield a

desired result – a result that overrides the routine and conventional" aspects of the technology. *DDR*, 773 F.3d at 1258–59. Here, we do not discern that these claims "stand apart," like those in *DDR* because they merely recite the performance of some business practice known from the pre-Internet world, along with the requirement to perform it on the Internet. *See DDR*, 773 F.3d at 1257. In other words, Appellant has not demonstrated their claimed generic computer components are able in combination to *perform functions that are not merely generic*, as the claims in *DDR*.

The claims, when viewed as a whole, are nothing more than conventional processing functions that courts have routinely found insignificant to transform an abstract idea into a patent-eligible invention. 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 1–6, 8, 9, 11–16, 18, 19, and 21–24.

35 U.S.C. § 103(a) Rejections

Claim 1 recites "*receiving, by the portable electronic device over the internet connection, concierge data* including a travel itinerary with at least one of a hotel reservation, restaurant reservation, and travel arrangement, *from a second server computer associated with a concierge service provider that previously scheduled the at least one of the hotel reservation, the restaurant reservation, and the travel arrangement on behalf of a user*,

wherein the concierge data is associated with the user of the portable electronic device" (emphasis added).

The Examiner finds Soroca's query results being filtered based on the user's location, as related to a hotel, a car rental, or restaurants, and the user's future location being based on past locations, teaches the claimed concierge data including travel itinerary with travel arrangements as it is received by the portable electronic device from a server associated with the concierge service provider that previously scheduled the travel arrangements. Final Act. 6 (citing Soroca ¶¶ 235, 338); Ans. 25–26 (citing Soroca ¶¶ 235, 338). We disagree with this interpretation.

The claimed invention requires the *concierge data*: (1) is *received by the portable electronic device* over the internet connection, (2*) includes a travel itinerary with* at least one of a hotel reservation, restaurant reservation, and *travel arrangement*, and (3) is *received from* a second server computer associated with a *concierge server provider* that *previously scheduled the* hotel reservation, restaurant reservation, and/or *travel arrangement on behalf of the user*. Appellant's Specification describes an example "if a user contacts a concierge service representative (using the digital concierge application or not) and plans a trip including hotel and travel arrangements using the concierge, *the concierge* may *send the user an itinerary including information related to the user's hotel and travel arrangements*." Spec. ¶ 34 (emphasis added). We find that the claimed receiving concierge data from a server computer associated with a concierge server provider that previously scheduled the reservations and arrangements, in light of Appellants' Specification, is *distinguished from* receiving query

results including travel arrangement data in response to a user query or search.

Here, we agree with Appellant that Soroca does not teach the concierge data is "from a second server computer associated with *a concierge service provider that previously scheduled the at least one of the hotel reservation, restaurant reservation, and the travel arrangement on behalf of a user*." App. Br. 20–21 (emphasis added); Reply Br. 6. As cited by the Examiner (Ans. 25), Soroca teaches a "*user may receive* (by implicit *query, or as a result of a search) results that are pertinent to travel* in the location where the user is located, such as hotel, car rental, and restaurant information." Soroca ¶ 235 (emphasis added). We find Soroca teaches receiving, at the portable electronic device (user's mobile device), concierge data including data associated with travel arrangements (results pertinent to travel near the user location, such as hotel, car rental, and restaurant information), but does *not* teach receiving the data from a server computer associated with the concierge service provider that previously scheduled the travel arrangements. Thus, we disagree with the Examiner's finding that Soroca teaches "receiving, by the portable electronic device over the internet connection, concierge data . . . from a second server computer associated with a concierge service provider that previously scheduled the at least one of the hotel reservation, the restaurant reservation, and the travel arrangement on behalf of a user," as required by claim 1.

Because we agree with at least one of the arguments advanced by Appellant's regarding claim 1, we need not reach the merits of Appellant's other arguments.

Accordingly, we will *not* sustain the Examiner's § 103(a) rejections of independent claim 1, as well as commensurate independent claim 11, and dependent claims 2–6, 8, 9, 12–16, 18, 19, and 21–24.

DECISION

The Examiner's rejection of claims 1–6, 8, 9, 11–16, 18, 19, and 21–24 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejections of claims 1–6, 8, 9, 11–16, 18, 19, and 21–24 under 35 U.S.C. § 103(a) are reversed.

Because we affirm at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner's decision to reject all of the pending claims.

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