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EXAMINER

MANSFIELD, THOMAS L

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY SCOTT EDER

Appeal 2017-000138
Application 11/262,146
Technology Center 3600

Before NINA L. MEDLOCK, AMEE A. SHAH, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

SHAH, *Administrative Patent Judge*.

DECISION ON APPEAL¹

The Appellant² appeals under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 21–37 and 44–49 under 35 U.S.C. § 101 as being directed to a judicial exception without significantly more. The Appellant’s representative appeared for oral argument on October 23, 2018. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

¹ Throughout this decision, we refer to the Appellant’s Appeal Brief (“Appeal Br.,” filed Jan. 14, 2016), Reply Brief (“Reply Br.,” filed Sept. 26, 2016), and Specification (“Spec.,” filed Oct. 28, 2005), to the Examiner’s Answer (“Ans.,” mailed July 26, 2016) and Final Office Action (“Final Act.,” mailed June 29, 2015), and to the Transcript (“Tr.”) of the oral argument held October 23, 2018.

² According to the Appellant, the real party in interest is “Square Halt Solutions, Limited Liability Company.” Appeal Br. 1.

STATEMENT OF THE CASE

The Appellant's invention "relates to a computer based method of and system for context search for an organization, organization combination or subset of an organization including an individual, a team or a division." Spec. 2.

Claims 21, 26, 31, and 44 are the independent claims on appeal. Claim 21 (Appeal Br. 30–31 (Claims App.)) is illustrative of the subject matter on appeal and is reproduced below (with added bracketing for reference):

21. A computer-implemented management method, comprising:

[(a)] storing, by a computer processor, a measure definition of a measurable and a plurality of level definitions of organization levels for one or more organizations;

[(b)] collecting data, by the computer processor, from a plurality of data sources;

[(c)] developing, by the computer processor, one or more context layers for each of the organization levels from the data and the measurable, wherein the one or more context layers include at least an instant impact context layer that comprises information regarding a short-term impact of one or more business actions, and a mission impact context layer that comprises information regarding a long-term impact on each of one or more mission measures;

[(d)] developing, by the computer processor, a context frame that comprises a measure model of the measurable and one or more of the context layers, including the instant impact context layer and the mission impact context layer, for the organization levels of the one or more organizations by learning from the data, wherein the context frame summarizes a measure performance situation for the one or more organization levels; and

[(e)] providing, by the computer processor, one or more applications to manage a measure performance for the one or more organization levels;

[(f)] wherein the applications utilize the context frame that includes the instant impact context layer and the mission impact context layer, the measure model comprises a single quantitative output variable, and the measure model identifies a relative contribution of one or more elements and one or more factors to the measurable for the one or more organizations.

ANALYSIS

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 588–89 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 78–79 (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.” *Id.* (emphasis added) (citing *Mayo*, 566 U.S. at 79). If so, the second step is to consider the elements of the claims “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*, 566 U.S. at 78–79).

Turning to step one of the *Mayo/Alice* two-step framework, we consider the claims “in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). The question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

Here, the Examiner determines that the claims “recite the abstract idea of measuring performance for different levels within an organization which has been identified by the courts as both an abstract idea a fundamental economic practice and of organizing human activities” (Final Act. 3) and are “directed to the concept of comparing new and stored information and using rules to identify options as well as organizing information through mathematical correlations with the aid of a generic computer” (*id.* at 4); *see also* Ans. 2 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014)). The Appellant does not state to what it considers the claims directed, but contends the Examiner’s determination is in error because “**Claim 21** sets forth features that are more than mere organization and comparison of data.” Appeal Br. 15.

The Specification provides evidence as to what the claimed invention is directed. The Title of the Specification provides for “A CONTEXT SEARCH SYSTEM,” and the Background section states that the “invention

relates to a computer based method of and system for context search for an organization, organization combination or subset of an organization including an individual, a team or a division” (Spec. 2). The Summary section provides that:

It is a general object of the present invention to provide a novel, useful system that develops, analyzes, stores and applies complete context information for use in searching, sorting and displaying data, information and/or knowledge for any organization, organization combination or subset of an organization including an individual, a team or a division with one or more quantifiable missions.

Id. Independent claim 21 provides for a computer-implement method comprising the steps of (a) storing data of a measure definition, (b) collecting data, (c) developing context layers, (d) developing a context frame, and (e) providing an application to manage measurement data. *See* Appeal Br. 30–31 (Claims App.). Independent claims 26, 31, and 44 provide for a system, storage device, and program product, respectively, to perform similar functions to that of claim 21. *See id.* at 32–34, 36, 37. As such, we address the independent claims as a group with claim 21 representative.

A context layer, as recited in limitation (c) of claim 21, is defined in the Specification as “each different type of information.” Spec. 8. A context frame, as recited in limitation (d), is defined as “[e]ach different combination of context layers, organization levels and organizations” (*id.*) and comprises a measure model of the measurable, one or more of the context layers, and/or a measure relevance “by learning from the data” (claims 21, 26, 31, 44 (Appeal Br. 30, 32, 34, 36 (Claims App.))). The applications provided in limitation (e) utilize the context frame, as recited in

limitation (f). The term “developing” as recited in limitations (c) and (d) is not specifically defined. The dictionary definitions of “develop” include “to set forth or make clear by degrees or in detail,” “to work out the possibilities of,” and “to create or product especially by deliberate effort over time.”

Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/develop>, last visited Nov. 7, 2018. The Appellant contends that developing a context frame by learning from data, i.e., limitation (d), is creating a new machine-learning decision-making process by weighing data according to specific rules. *See* Tr. 8, ll. 14–16; 9, l. 9 through 13, l. 15.

In light of the evidence, we agree with the Appellant that the Examiner’s characterization of claim 21 as directed to “measuring performance for different levels within an organization” (Final Act. 3) by “comparing new and stored information and using rules to identify options as well as organizing information through mathematical correlations” (*id.* at 4) does not consider the claim as a whole (*see* Appeal Br. 15). We determine that the claim is more accurately characterized as being directed to knowledge based performance management by developing a model by learning from data and providing applications that utilize that model. We make no determinations as to whether this is an abstract idea, is a “specific means or method that improves the relevant technology,” or is “a result or effect that itself is the abstract idea and merely invokes generic processes and machinery.” *McRO*, 837 F.3d at 1314.

Because we find error in the Examiner’s determination as to what the independent claims are directed under the first step of the *Mayo/Alice* framework, we do not reach the second step. And, we do not sustain the Examiner’s rejection under 35 U.S.C. § 101 of claims 21–37 and 44–49.

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DECISION

The Examiner's rejection of claims 21–37 and 44–49 under 35 U.S.C.
§ 101 is REVERSED.

REVERSED