UNITED STATES PATENT AND TRADEMARK OFFICE

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10/323,279	12/18/2002	Andrew L. Schirmer	LOT920020040US1	1299

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HOFFMAN WARNICK LLC
540 Broadway
4th Floor
ALBANY, NY 12207

EXAMINER
WINTER, JOHN M

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte ANDREW L. SCHIRMER

_____

Appeal 2017-000299
Application 10/323,279
Technology Center 3600

_____

Before JOHNNY A. KUMAR, JOHN A. EVANS, and
JASON M. REPKO, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] seeks our review under 35 U.S.C. § 134(a) from the
Examiner's Final Rejection of claims 1, 2, 4–9, 11, 12, 15, 16, 18, and 19.
App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

_____

[1] Appellant states the real party in interest is International Business
Machines Corporation. App. Br. 1.

[2] Rather than reiterate the arguments of the Appellant and the Examiner, we
refer to the Appeal Brief (filed November 16, 2015, "App. Br."), the Reply
Brief (filed September 29, 2016, "Reply Br."), the Examiner's Answer
(mailed July 29, 2016, "Ans."), the Final Action (mailed July 17, 2015,
"Final Act."), and the Specification (filed December 18, 2002, "Spec.") for
their respective details.

STATEMENT OF THE CASE

The claims relate to the determination of the relationship of a data item, obtained from a private data source, to an entity. *See* Abstract.

INVENTION

Claims 1, 8, and 15 are independent. An understanding of the invention can be derived from a reading of Claim 1, which is reproduced below with some formatting added:

> 1.   A computer implemented method for protecting privacy, comprising:
>
>> obtaining, by a computing device, a data item from a private source;
>>
>> identifying, by the computing device, a relationship of the data item to an entity;
>>
>> obtaining, by the computing device, approval to publish the data item from a data item approver by determining, by the data item approver, to approve of the publication of the data item by applying a first set of criteria;
>>
>>> wherein the first set of criteria is selected from the group consisting of: whether the data item is secret, or whether the data item is accurate;
>>
>> obtaining, by the computing device, approval to publish the relationship from a relationship approver different than the data item approver by determining, by the relationship approver, that an acceptable relationship exists using a second set of criteria different from the first set of criteria, wherein the determining of an acceptable relationship includes analyzing meta data pertaining to the data item by a relationship system; and

> publishing, by the computing device, the data item and
> the relationship after receiving approval from both the data item
> approver and the relationship approver; wherein information
> about the relationship and the relationship approver is hidden
> from the data item approver until both the data item and the
> relationship are approved for publication.

References and Rejections

Ginter, *et al.*,	US 5,892,900	Apr. 6, 1999
Pettovello	US 6,449,621 B1	Filed Nov. 3, 1999
Arroyo, *et al.*,	US 2003/0033167 A1	Filed Aug. 13, 2002

The claims stand rejected as follows:

1. Claims 1, 2, 4–9, 11, 12, 15, 16, 18, and 19 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception. Final Act. 3.

2. Claims 1, 2, 4–9, 11, 12, 15, 16, 18, and 19 stand rejected under 35 U.S.C. § 103 as unpatentable over Ginter, Arroyo, and Pettovello. Final Act. 4–8.

ANALYSIS

We have reviewed the rejections of Claims 1–20 in light of Appellant's arguments that the Examiner erred.

We consider Appellant's arguments *seriatim*, as they are presented in the Appeal Brief, pages 3–8.

CLAIMS 1, 2, 4–9, 11, 12, 15, 16, 18, AND 19: ABSTRACT IDEA.

In *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), the Supreme Court elaborates an analytical two-step framework previously set forth in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66

(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 the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.* If the claims are directed to eligible subject matter, the inquiry ends. *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016). If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "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." *Enfish*, 822 F.3d at 1334 (citing *Mayo*, 566 U.S. at 78–79). 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.'" *Alice*, 134 S. Ct. at 2355 (citing *Mayo*, 566 U.S. at 72–73).

Mayo/Alice Step 1

The Examiner finds Claim 1 recites, in part, a method of obtaining data from a private source, identifying a relationship, obtaining approval to publish a data item, obtaining approval to publish a relationship, publishing a data item and a relationship. Ans. 2.

Appellant contends the Examiner fails to identify the particular judicial exception which the claims are allegedly directed. Rather, the Examiner finds the claims are directed to "the abstract idea of publishing

content based upon receiving approval." Ans. 8 (citing Final Act. 3).
Appellant argues that the finding does not align with a judicially recognized
exception. *Id.* Appellant argues that simply being a computer-implemented
method is the sole basis of the Examiner's rejection, but that privacy
technology is a critical element of modern computer technology and finding
such technology to be too abstract to be patentable subject matter is a
reversible error. Reply Br. 3.

At Step 1, we agree with the Examiner that the claims are directed to
an abstract method, albeit computerized, of categories to organize, store and
transmit information, which corresponds to concepts previously identified as
abstract. *See* Ans. 2 (citing *CyberFone*[3]). Although the claims recite "a
computing device," the individual steps of the method are capable of being
performed by a person, either mentally or with paper and pencil. Such
capability renders the method abstract. *See CyberSource Corp. v. Retail
Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011).

Mayo-Alice Step 2

Appellant argues "even if the claimed method of protecting privacy
were deemed abstract under the first step of the Alice test, the claims include
additional elements that are sufficient to amount to significantly more than
the judicial exception." Reply Br. 3. At Step 2, the analysis considers the
elements of the claims "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." *Enfish*, 822 F.3d at 1334

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[3] *CyberFone Systems, LLC v. CNN Interactive Group*, 558 Fed. Appx. 988
(Fed. Cir. 2014) (non-precedential).

(citing *Mayo*, 566 U.S. at 78–79). Although Appellant argues the claim elements "amount to significantly more than the judicial exception" (Reply Br. 3), but Appellant fails to specify which element or combination of elements allegedly amounts to significantly more.

On the record before us, we are not persuaded the claims recite "significantly more" than an abstract idea, nor are we persuaded the Examiner errs in rejecting Claims 1, 2, 4–9, 11, 12, 15, 16, 18, and 19 under 35 U.S.C. § 101.

CLAIMS 1, 2, 4–9, 11, 12, 15, 16, 18, AND 19: OBVIOUSNESS OVER GINTER, ARROYO, AND PETTOVELLO.

The Examiner finds Ginter fails to disclose determining an acceptable relationship using meta data. Final Act. 5. The Examiner finds Arroyo teaches determining an acceptable relationship using meta data. *Id.*

Appellant contends Arroyo is silent as to meta data. App. Br. 9.

Contrary to Appellant, the Examiner finds Arroyo discloses "meta data." Ans. 4 (citing Arroyo, ¶ 53; Fig. 5).

In agreement with Appellant, our search of Arroyo fails to reveal the term "meta data." Specifically, our search of Paragraph 53 and Figure 5 fails to reveal the term "meta data." Nor has the Examiner mapped the terms actually found in Arroyo to the claimed "meta data."

Because the cited art does not teach at least one claim limitation, we are constrained by the record to reverse the rejection of Claims 1, 2, 4–9, 11, 12, 15, 16, 18, and 19 under 35 U.S.C. § 103.

DECISION

The rejection of Claims 1, 2, 4–9, 11, 12, 15, 16, 18, and 19 under 35 U.S.C. § 101 is AFFIRMED

The rejection of Claims 1, 2, 4–9, 11, 12, 15, 16, 18, and 19 under 35 U.S.C. § 103 is REVERSED.

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