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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID H. TANNENBAUM

Appeal 2017-000304¹
Application 13/272,826²
Technology Center 3600

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

FINAMORE, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Our Decision references Appellant’s Specification filed October 13, 2011 (“Spec.”), Appeal Brief filed January 14, 2016 (“Appeal Br.”), and Reply Brief filed October 4, 2016 (“Reply Br.”), as well as the Examiner’s Answer mailed August 4, 2016 (“Ans.”) and Final Office Action mailed August 14, 2015 (“Final Act.”). An oral hearing was held on October 23, 2018, and the record includes a transcript of the hearing.

² Appellant identifies Fantod Audio Limited Liability Company, which is affiliated with Intellectual Ventures Management LLC, as the real party in interest. Appeal Br. 1.

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner's decision to reject claims 33–35, 39–45, and 47–50.³ We have jurisdiction under § 6(b). We AFFIRM.

SUBJECT MATTER ON APPEAL

The invention “relates to the delivery of merchandise from a merchandise provider to a merchandise seeker and more particularly to a system and method for allowing a merchandise provider to identify merchandise seekers.” Spec. ¶ 2. Claims 33 and 43 are the independent claims on appeal. Independent claim 33, reproduced below, is illustrative of the claimed subject matter:

33. A system for searching, purchasing, and selling tickets to a ticketed event, the system comprising:

a server in communication with a search engine, the search engine configured to receive one or more search queries associated with the ticketed event and to search one or more databases for information associated with the ticketed event;

wherein the server is configured to:

instruct the search engine to perform a search of the one or more databases for one or more desired locations for the ticketed event, thereby generating a search result;

determine whether a particular desired location in the search result generated by the search engine matches any of at least one scheduled location for the ticketed event; and

in response to no desired location in the search result matching any of the at least one scheduled location for the ticketed event, instruct the search engine to

³ The Final Office Action also references claims 36 and 37. Final Act. 1, 3–5, 8. These claims, however, have been canceled (Appeal Br., Claims App.), and are not before us on appeal.

continue searching the one or more databases until a triggering condition is satisfied.

REFERENCES

The Examiner relies on the following references in rejecting the claims on appeal:

DeLorme et al.	US 5,948,040	Sept. 7, 1999	(“DeLorme”)
Bisdikian et al.	US 5,974,406	Oct. 26, 1999	(“Bisdikian”)
Stewart	US 2001/0049634 A1	Dec. 6, 2001	
Keller et al.	US 2001/0053989 A1	Dec. 20, 2001	(“Keller”)

REJECTIONS

The Examiner rejects the claims on appeal as follows:

- I. claims 33–35, 39–45, and 47–50 under 35 U.S.C. § 101 as directed to non-statutory subject matter;
- II. claims 33, 34, 41–44, 47, 49, and 50 under 35 U.S.C. § 103(a) as unpatentable over Bisdikian and DeLorme;
- III. claims 35 and 45 under 35 U.S.C. § 103(a) as unpatentable over Bisdikian, DeLorme, and Keller;
- IV. claims 39 and 48 under 35 U.S.C. § 103(a) as unpatentable over Bisdikian, DeLorme, and Stewart; and
- V. claim 40 under 35 U.S.C. § 103(a) as unpatentable over Bisdikian, DeLorme, Stewart, and Keller.

ANALYSIS

Rejection I

An invention is patent eligible if it is a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws 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, 589 (2013)).

To “distinguish[] patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts,” the Supreme Court, in *Alice*, reaffirmed the two-step analysis previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012). *Alice*, 134 S. Ct. at 2355. The first step of this analysis considers whether a claim is directed to a patent-ineligible concept, e.g., an abstract idea. *Id.* (citing *Mayo*, 566 U.S. at 77). If so, the second step considers whether the claim recites an inventive concept—an element or combination of elements sufficient to ensure the claim amounts to significantly more than the abstract idea and transform the nature of the claim into a patent-eligible application. *Id.* (citing *Mayo*, 566 U.S. at 72–73, 78, 79).

In rejecting the claims under 35 U.S.C. § 101 as directed to non-statutory subject matter, i.e., subject matter judicially excepted from statutory subject matter, the Examiner analyzes the claims using this two-step framework. Final Act. 3–4. Pursuant to the first step, the Examiner determines the claims are directed to “the abstract idea of

searching for a triggering condition for a desired location which is (ii) a method of organizing human activities and (iii) an idea of itself.” *Id.* at 4. Under the second step, the Examiner determines the claims do not recite significantly more than the abstract idea because the additional elements of the claims, alone and in combination, “amount[] to no more than the recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.” *Id.*

Appellant argues claims 33–35, 39–45, and 47–50 as a group. Appeal Br. 4–10; Reply Br. 1–4. We select independent claim 33 as representative, and the remaining claims of the group stand or fall with independent claim 33. 37 C.F.R. § 41.37(c)(1)(iv).

As an initial matter, we are not persuaded of Examiner error by Appellant’s argument that independent claim 33 does not preempt all applications of the abstract idea. Appeal Br. 8–10. Although preemption may be the concern behind the judicial exceptions to statutory subject matter, preemption is not the test for eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability. For this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citation omitted).

Turning to the § 101 analysis prescribed in *Alice*, Appellant argues the Examiner errs in determining that independent claim 33 is directed to an abstract idea pursuant to the first step of the analysis. Appeal Br. 4–8; Reply Br. 1–2. More specifically, Appellant asserts the Examiner’s characterization of the claim ignores limitations and does not reflect the

claim as a whole. Appeal Br. 4; Reply Br. 1–2. Appellant also alleges the claim is not directed to an abstract idea, but instead addresses a problem specifically arising in the realm of search engines and the Internet.

Appeal Br. 7–8; Reply Br. 2. Appellant’s arguments are not convincing.

In determining whether a claim is directed to excluded subject matter, e.g., an abstract idea, the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). For computer-implemented inventions in particular, such as the present invention, “the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36.

Here, independent claim 33 recites a system for searching, purchasing, and selling tickets to a ticketed event. The system comprises a server in communication with a search engine, and uses these components to perform the steps of: receiving a search query associated with a ticketed event; searching a database for information associated with the ticketed event; searching the database for a desired location for the ticketed event; determining whether a particular desired location from the search matches a scheduled location for the ticketed event; and in response to there being no match, continuing to search the database until a triggering condition is satisfied. Simply put, independent claim 33 recites a computer system that

implements a process for searching for a desired location for a ticketed event that matches a scheduled location for a ticketed event and, in response to there being no match, continuing to search until a triggering condition is satisfied. Consequently, the issue is whether the focus of the claim is on a process for searching for a desired location for a ticketed event or on an improvement to the computer system.

In this regard, Appellant argues the claimed invention is an improvement to the computer system because it addresses the problem of a search engine being able to search only information existing on the Internet at the time the information is sought. Appeal Br. 7 (citation omitted). Indeed, the claimed invention provides the ability to search for a desired location for a ticketed event that is not yet available by: receiving a search query associated with a ticketed event, searching for a desired location for the ticketed event that matches a scheduled location for a ticketed event, and, when there is no match, continuing to search until a triggering condition is satisfied. The improvement, however, is to the search methodology, not to the computer system. Although the claimed invention implements the improved search methodology via a computer system such that the computer system can search for a desired location for a ticketed event that is not yet available, any implementation of the search methodology would be improved similarly. Accordingly, the claimed invention uses the components of the computer system as tools to implement an improved searching process, and the focus of the claimed invention is on a process for searching for a desired location for a ticketed event for which computers are invoked merely as a tool, not on an improvement to computer technology.

Furthermore, we see no meaningful distinction between the concept of searching for a desired location for a ticketed event and other concepts the courts have held to be abstract ideas. For example, the concept of searching for a desired location for a ticketed event is similar to the concept of filtering content in *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016), as both are longstanding, well-known methods of organizing human behavior.

In view of the foregoing, independent claim 33 is directed to the abstract idea of searching for a desired location for a ticketed event. Given that the claim is directed to an abstract idea under the first step of the *Alice* analysis, we turn to the second step.

Appellant argues independent claim 33 recites an inventive concept because the claimed invention is a technical solution to a technical problem. Reply Br. 3. More specifically, Appellant asserts the claimed invention addresses the problem of constantly changing information on the Internet by searching for a desired location for a ticketed event, checking for a match between a desired location generated by the search and a scheduled location, and, if there is none, continuing to search until a triggering condition is satisfied. *Id.* Appellant's argument is not persuasive of Examiner error.

The fact that the claimed invention recites a computer system, in and of itself, does not mean the claimed invention addresses a technical problem or represents a technical solution. Here, the problem of searching through information that is constantly changing is not a technical problem. Rather, the problem exists in any realm where information changes, e.g., a search engine searching the Internet for information or a person manually searching records that are updated. Moreover, the solution, i.e., the search

methodology involving the steps of searching for a desired location for a ticketed event, checking for a match between a desired location generated by the search and a scheduled location, and, if there is none, continuing to search until a triggering condition is satisfied, is likewise untechnical, as performance of these steps does not require a computer.

As we explain above, the second step of the *Alice* analysis considers whether the claim “contains an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 72, 80). Apart from the search methodology, which describes the abstract idea of searching for a desired location for a ticketed event, independent claim 33 recites a search engine and a server. The Examiner determines, and Appellant does not refute, that the claimed computer components are generic computer structure. Final Act. 4; Ans. 3; *see also* Spec. ¶ 34. Although the computer system may be improved by implementing the recited search methodology that addresses the problem of searching through information that is constantly changing, any implementation of the search methodology would be so improved. Accordingly, the recited computer components are insufficient to transform the claimed abstract idea into a patent-eligible application. *See Alice*, 134 S. Ct. at 2358 (“Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of ‘additional featur[e]’ that provides any ‘practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.’” (alteration in original) (internal citation omitted) (quoting *Mayo*, 566 U.S. at 77)).

In view of the foregoing, Appellant has not persuaded us the Examiner erred in determining that independent claim 33 is patent ineligible. We, therefore, sustain the Examiner's rejection of independent claim 33 under 35 U.S.C. § 101, with claims 34, 35, 39–45, and 47–50 falling therewith.

Rejection II

Each of independent claims 33 and 43 recites “determine whether a particular desired location in the search result generated by the search engine matches any of at least one scheduled location for the ticketed event.” Appellant argues the Examiner has not shown that the combined teachings of Bisdikian and DeLorme would have resulted in this limitation. Appeal Br. 13; Reply Br. 5. Appellant's argument is persuasive.

In rejecting independent claims 33 and 43, the Examiner relies on DeLorme for teaching the disputed limitation. Final Act. 5. Namely, the Examiner acknowledges “Bisdikian does not teach a search query regarding whether at least one scheduled location for a ticketed event matches the desired location,” and finds “DeLorme teaches searching a particular desired location for a concert/ticketed event to determine whether there is an event of interest or concert in the one or more desired locations.” *Id.* (citations omitted). According to the Examiner, DeLorme's teaching of searching for events in a particular location discloses this claim limitation because “the event ticket and the event ticket location are not mutually exclusive.” Ans. 6.

Even if we agree that DeLorme's teaching of searching for a ticketed event in a particular location is tantamount to searching for a desired

location for a ticketed event so as to generate a search result including a desired location, the Examiner has not shown that DeLorme teaches comparing the desired location in the search result with a scheduled location for the ticketed event, as the disputed limitation requires. DeLorme's teaching of searching for a ticketed event in a particular location does not contemplate what is done with the search result, and therefore, does not teach comparing the desired location in the search result to a scheduled location.

In view of the foregoing, the Examiner has not shown that the combined teachings of Bisdikian and DeLorme would have resulted in the limitation of independent claims 33 and 43 reciting "determine whether a particular desired location in the search result generated by the search engine matches any of at least one scheduled location for the ticketed event." We, therefore, do not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of independent claims 33 and 43 and claims 34, 41, 42, 44, 47, 49, and 50 depending therefrom.

Rejections III–V

The Examiner's rejections of claims 35, 39, 40, 45, and 48 suffer from the same deficiency as the Examiner's rejection of the independent claims. Final Act. 7–9. Accordingly, we similarly do not sustain the Examiner's rejections of claims 35, 39, 40, 45, and 48 under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision to reject claims 33–35, 39–45, and 47–50 under 35 U.S.C. § 101 is affirmed.

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The Examiner's decision to reject claims 33–35, 39–45, and 47–50 under 35 U.S.C. § 103(a) 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). 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED