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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRETT ERROR, CHRIS ERROR,
and BRIAN CURRAN

Appeal 2017-000437
Application 10/608,442
Technology Center 3600

Before MURRIEL E. CRAWFORD, BRADLEY B. BAYAT, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1, 2, 4–6, 17, 26–31, and 34–39.² We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

¹ Appellants identify Adobe Systems Incorporated as the real party in interest. Appeal Br. 4.

² Claims 3, 7–16, 18–25, 32, and 33 have been canceled.

BACKGROUND

Appellants' invention is directed to "tracking user traffic on websites, and more specifically, to a method and system for generating custom events and attributes related to those events to be collected and analyzed by a data collection server." Spec. ¶ 2.

Claim 1 is illustrative:

1. A method for customizing traffic tracking for an online content site accessed via the Internet, the method comprising:
 - generating by a processor, tracking code for a content page of a content site;
 - providing by the processor, a graphical user interface comprising user interface elements for specifying creation of a custom event;
 - receiving user input, by the processor via the graphical user interface, defining the custom event by specifying a combination of a content item and an interaction with the content item, wherein the combination of the content item and the interaction is specific to the content site;
 - generating, by the processor, custom configuration data based on the custom event specified through the user input, wherein the custom configuration data comprises data identifying the combination of the interaction and the content item that is specific to the content site; and
 - providing, by the processor, the custom configuration data for embedding into the tracking code for the content page of the content site,
 - wherein embedding the custom configuration data into the tracking code modifies the tracking code for tracking occurrences of the custom event.

The Examiner relies on the following prior art reference as evidence of unpatentability:

Ramraj	US 2002/0174174 A1	Nov. 21, 2002
Messer	US 7,020,622 B1	Mar. 28, 2006
Niffenegger	WO 01/31492 A2	May 3, 2001

Appellants appeal the following rejections:

Claims 1, 2, 4–6, 17, 26–31, and 34–37 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1, 2, 4–6, 17, 26, 29–31, 34, and 37–39 under 35 U.S.C. § 103(a) as unpatentable over Niffenegger in view of Ramraj.

Claims 27 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Niffenegger and Ramraj, and further in view Messer.

Claims 28 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Niffenegger, Ramraj, and Messer, and further in view of Official Notice.

PRINCIPLES OF LAW

An invention is patent eligible if it claims 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 implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement

risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk”); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (“Analyzing respondents’ claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter.”); *Parker v. Flook*, 437 U.S. 584, 594–95 (1978) (“Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) (“They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.”).

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Parker*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Gottschalk*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber, *Diamond*, 450 U.S. at 182 n.7, “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores,” and a process for manufacturing flour, *Gottschalk*, 409 U.S. at 69.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This is a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.*

The Federal Circuit in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), determined that the claims satisfied *Alice* step two because “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.* at 1257. As a result, the *DDR* court held the claims patent eligible regardless of whether they are characterized as an abstract idea under *Alice* step one. *See id.*

ANALYSIS

Rejection under 35 U.S.C. §101

The Examiner holds that the claims are directed to setting up targeted tracking information for a website and, therefore, are directed to an abstract idea. The Examiner finds that it is long held in targeted advertising to identify what information you want monitored to determine effectiveness. Final Act. 2–3. In regards to the second step of the *Alice* analysis, the Examiner holds that the additional steps of providing an interface, receiving inputs, and providing data are all insignificant generic computer activities.

The Appellants argue that the claims recite significantly more than any abstract idea because they address the technical problem that involves customizing traffic tracking for an online content site accessed via the Internet and is an Internet-centric problem unique to the Internet realm. Appeal Br. 17–18. Appellants also argue that the claims are rooted in computer technology because the steps of generating custom configuration data based on the custom event specified through the user and providing custom configuration for embedding into the tracking code are functions

that, individually and in combination, require computing devices for their performance. *Id.* at 18.

Appellants' Specification discloses that a data collection system provider may create a set of web bug requests that a website operator can paste in web pages. The web bugs have been created by the data collection provider to identify specific events such as opening a home page or checking out a page. The events are coded in the web bug request itself. However, a web operator cannot change the event identified without having the data collection provider modify the code. As the web provider cannot change the events without the aid of the data collection provider, the flexibility of the web operators to accurately describe events they want to track is diminished (Spec. ¶¶ 10–11). Because the web operator must enlist the aid of the data collection provider, making changes is costly and inefficient (*id.* ¶ 14). The present invention provides a system wherein the web provider can make changes to the web bug without enlisting the aid of the data collection provider. The method of claim 1 includes the steps of receiving user (web provider) input by the processor defining an event and content item for a specific content site, generating by the processor custom configuration data, providing custom configuration data, and embedding the custom configuration data into a tracking code for the content page of the site. In this way, the web provider can modify the events tracked without the aid of the data collection provider. As such, the instant application and claims are directed to solving data collection system problems on a website.

We agree with the Appellants' argument that claim 1 is directed to problem unique to the Internet realm. The instant claims are analogous to the claims in *DDR*, 773 F.3d at 1257, where the court noted that a claim may

amount to more than any abstract idea recited in the claims when it addresses a business challenge, such as “retaining website visitors,” where that challenge is particular to a specific technological environment, such as the Internet. In *DDR*, the court stated that the “patent’s claims address the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *DDR*, 773 F.3d at 1257. This was done in the claim by serving a composite page with content based on the link that was activated to serve the page.

In the instant case, the problem addressed was the inability of the web provider to change the events tracked without the aid of the data collection provider because the data collection provider was the only one with the technical ability to change the code that tracks events. This is a problem unique to the Internet and computer technology and, thus, amounts to significantly more than an abstract idea.

In view of the foregoing, we will not sustain the Examiner’s rejection of claim 1. We will also not sustain this rejection as it is directed to the remaining claims subject to this rejection for the same reason.

Rejections under 35 U.S.C. § 103

We will not sustain the rejection of claim 1 as unpatentable over Niffenegger and Ramraj because we agree with the Appellants that the prior art does not disclose generating data identifying the combination of the interaction and the content of item that is specific to the content site as recited in claim 1. The Examiner relies on lines 112–115 of Niffenegger for teaching this subject matter. Final Act. 3.

We find that Niffenegger discloses at lines 51–58 that the problem sought to be solved is that prior art systems track user behavior by a specific website and do not track behavior with respect to ads over a number of diverse websites. Niffenegger further discloses at lines 112–115, which were relied on by the Examiner for disclosing the claimed subject matter, that an advertiser can customize content, determine ad rates, and develop user profiles based data related to whether an ad is visible on the screen, how long the ad is visible, and what user interactions, if any, are taken with respect to the ad. We agree with the Appellants that there is no disclosure that the data used is specific to a content site as required by claim 1. Therefore, we will not sustain the rejection of claim 1. We also will not sustain the rejections of the remaining claims for the same reason.

DECISION

We do not affirm the Examiner’s § 101 rejection.

We do not affirm the Examiner’s § 103 rejections.

ORDER

REVERSED