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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DREW JON DUTTON and ROBERT BARTMESS

Appeal 2017-000690
Application 13/463,901
Technology Center 2800

Before TERRY J. OWENS, MICHAEL P. COLAIANNI, BRIAN D. RANGE, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The appellants claim a method for generating an energy usage baseline. Claim 1 is illustrative:

> 1. A method in a data processing system for generating an energy usage baseline, the method comprising:
>
> receiving historical energy usage data for building;
>
> identifying a historical energy usage baseline as a function of temperature based on the historical energy usage data;
>
> receiving measurements for current energy usage for the building to form a set of energy usage measurements;

associating the set of energy usage measurements with values for temperature for an area where the building is located;

generating, using the data processing system, a correction factor for the historical energy usage baseline based on a comparison of the set energy usage measurements with a portion of the historical energy usage baseline corresponding to the values for temperature associated with the set of energy usage measurements, wherein generating the correction factor for the historical energy usage baseline comprises:

identifying a range of the values for temperature associated with the set of energy usage measurements;

identifying the portion of the historical energy usage baseline that corresponds to the range of the values for temperature associated with the set of energy usage measurements, wherein the portion of the historical energy usage baseline; and

generating the correction factor based on the comparison of the set of energy usage measurements to the identified portion of the historical energy usage baseline;

generating an adjusted energy usage baseline by applying the correction factor to the historical energy usage baseline; and

generating an estimate of future energy usage savings attributable to use of energy saving products at the building using the adjusted energy usage baseline.

The Rejection

Claims 1–20 stand rejected under 35 U.S.C. § 101 as claiming nonstatutory subject matter.

OPINION

We affirm the rejection.

The Appellants rely upon essentially the same arguments with respect to each independent claim (1, 8 and 15) and do not provide a substantive argument as to the separate patentability of any dependent claim but, rather,

merely state what each claim recites and assert that what is recited is not an abstract idea (App. Br. 13–83).[1] Accordingly, we limit our discussion to one claim, i.e., claim 1. Claims 2–20 stand or fall with that claim.[2]

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. The Supreme Court stated in *Bilski v. Kappos*, 561 U.S. 593, 601 (2010) that "[t]he Court's precedents provide three specific exceptions to § 101's broad patent-eligibility principles: 'laws of nature, physical phenomena, and abstract ideas.' [*Diamond v.*] *Chakrabarty*, [447 U.S. 303,] 309, 100 S. Ct. 2204 [(1980)]." The Court further stated that limiting an abstract idea to a particular technological environment does not make the concept patentable. *See Bilski*, 561 U.S. at 610–611. Determining whether a claimed invention is patent-eligible subject matter requires determining whether the claim is directed toward a patent-ineligible concept and, if so, determining whether the claim's elements, considered both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application. *See Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2350 (2014).

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[1] We address only the Appeal Brief because the arguments in the Reply Brief are essentially the same as those in the Appeal Brief.
[2] *See* 37 C.F.R. § 41.37(c)(1)(iv) (2012); *Cf.*, *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (Rule 41.37 "require[s] more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art").

The Appellants claim the abstract idea of comparing current energy usage over a temperature range to a portion of historical energy usage over the temperature range, using the difference between those energy usages to adjust the historical energy usage over its entire temperature range, thereby forming an adjusted historical energy usage baseline, and basing estimated future energy usage savings attributable to energy saving products on the adjusted historical energy usage baseline.

The Appellants argue, in reliance upon claim 1's steps, particularly the last step of "generating an estimate of future energy usage savings attributable to use of energy saving products at the building using the adjusted energy usage baseline", that "[w]hile the claim does recite generation of an adjusted energy usage baseline, viewing the claim as a whole, the claim clearly does not attempt to tie up all usage of generation of an energy usage baseline" (App. Br. 17–18).

Claim 1 is limited to estimating future energy usage savings at a building. However, limiting an abstract idea to a particular technological environment does not make the concept patentable. *See Alice,* 134 S. Ct. at 2355–57 (abstract idea limited to financial transactions); *Mayo Collaborative Services v. Prometheus Labs.*, 566 U.S. 66, 82–85 (2012) (abstract idea limited to treating immune-mediated gastrointestinal disorders); *Bilski*, 561 U.S. at 610–11 (abstract idea limited to commodities transactions); *Parker v. Flook*, 437 U.S. 584, 594–95 (1978) (abstract idea limited to hydrocarbon catalytic conversion).

As for claim 1's individual steps, none of them is limited to a particular technique for carrying out the recited step but, rather, each of them broadly recites an abstract idea. Also, as an ordered combination, those

steps, including the Appellants' relied-upon steps of measuring temperature and energy usage and generating an estimate of future energy usage savings (App. Br. 18, 22–23), do not transform the nature of the claim into a patent-eligible application. Instead, they claim the abstract idea set forth above.

Accordingly, we are not persuaded of reversible error in the rejection.

DECISION/ORDER

The rejection of claims 1–20 under 35 U.S.C. § 101 as claiming nonstatutory subject matter is affirmed.

It is ordered that the Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED