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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER P. RICCI

Appeal 2017-000824
Application 13/371,143
Technology Center 2400

Before JUSTIN BUSCH, CATHERINE SHIANG, and LINZY T. McCARTNEY, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–23, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Introduction

According to the Specification, the present invention relates to interacting with users. *See generally* Spec. 1. Claim 1 is exemplary:

1. A method, comprising:

receiving, by a microprocessor executable political-orientation social networking module and over an Internet from an Internet-capable communication device of an actual user, a profile of a selected actual user, the profile indicating a set of political orientations of the selected actual user;

comparing, by the microprocessor executable political-orientation social networking module, a selected portion of the selected actual user's profile against a selected portion of a profile of one or more selected objects, the one or more selected objects being one or more of another actual user, a political party platform, a political issue, a ballot, and an aggregate user, the aggregate user being determined from a set of a plurality of actual users;

identifying, by the microprocessor executable political orientation social networking module and based on the comparing step, at least one of a degree of similarity and dissimilarity between the selected portion of the selected actual user's profile and a selected portion of the profile of the one or more selected objects, wherein the profile of the selected actual user is determined based on the responses of the selected actual user to predetermined questions indicating a belief of the selected actual user on a set of political issues, each predetermined set of questions corresponding to a selected one of the political beliefs; and

based on the identifying step, performing, by the microprocessor executable political-orientation social networking module, at least one of the following steps:

(i) generating, for transmission over the Internet to the actual user's communication device for display by the actual user's communication device, a visual map comparing a degree of similarity and/or dissimilarity between the selected actual user and at least one of a aggregate user and an actual user with a distance between an icon representing the selected actual user and an icon representing the at least one of a aggregate user and an actual user being related to the at least one of a degree of similarity and dissimilarity between the selected actual user and the at least one of an aggregate user and an actual user; and

(ii) determining a characteristic of an aggregate user based on an average of the characteristic among the members of the selected set of the plurality of actual users and comparing the characteristic of actual users to the characteristic of the aggregate user for transmission over the Internet to

the actual user's communication device for display by the actual user's communication device to the selected actual user, wherein the plurality of actual users is a subset of all actual users, and wherein the aggregate user is not representative of all of the actual users.

References and Rejections[1]

Wallman	US 2005/0288996 A1	Dec. 29, 2005
Macadaan	US 2008/0209343	Aug. 28, 2008
Singh	US 2009/0313094 A1	Dec. 17, 2009
Buyukkokten	US 7,680,770 B1	Mar. 16, 2010
Kantarek	US 2010/0145765 Al	June 10, 2010
Tranter	US 2010/0325179 A1	Dec. 23, 2010

Claims 1–23 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1, 2, 4–7, and 11–14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh, Macadaan, Wallman, and Tranter.

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh, Macadaan, Wallman, Tranter, and Buyukkokten.

ANALYSIS

We disagree with Appellant's arguments, and agree with and adopt the Examiner's findings and conclusions in (i) the action from which this appeal is taken and (ii) the Answer to the extent they are consistent with our analysis below.[2]

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[1] The Examiner withdrew the rejection of claims 8–10 and 15–23 under 35 U.S.C. § 103. Ans. 11.

[2] To the extent Appellant advances new arguments in the Reply Brief without showing good cause, Appellant has waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

35 U.S.C. § 101

The Examiner rejects the claims under 35 U.S.C. § 101 because they are directed to non-statutory matter, as the claims amount to abstract ideas. *See* Final Act. 2–4; Ans. 3–6. Appellants argue the Examiner fails to establish a prima facie case. *See* App. Br. 8–19.

Appellant has not persuaded us of error. Section 101 of the Patent Act provides "[w]hoever 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. That 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). According to the Supreme Court:

> [W]e set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, we then ask, "[w]hat else is there in the claims before us?" . . . To answer that question, we consider the elements of each claim both individually and "as an ordered combination" to determine whether the additional elements "transform the nature of the claim" into a patent-eligible application. . . . We have described step two of this analysis as a 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 Corp., 134 S. Ct. at 2355.

The Federal Circuit has described the Alice step 1 inquiry as looking

at the "focus" of the claims, their "character as a whole," and the Alice step 2 inquiry as looking more precisely at what the claim elements add—whether they identify an "inventive concept" in the application of the ineligible matter to which the claim is directed. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335-36 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

In response to Appellant's arguments, the Examiner provides further findings showing the claims are directed to non-statutory matter. *See* Ans. 3–6. In particular, the Examiner finds the claims are directed to the abstract idea of profiling, comparing and identifying information, determining similarity or dissimilarity, and displaying results (such as displaying a visual map). *See* Ans. 3–6. The Examiner further finds the claims use generic computer components to perform generic computer functions. *See* Ans. 3–6. Appellant fails to persuasively respond to such findings and therefore, fails to show error in the Examiner's findings.

Further, the Examiner's findings are correct.

Regarding Alice step 1,

> we have treated *collecting information*, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas. . . . In a similar vein, we have treated *analyzing information* by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category. . . . And we have recognized that *merely presenting the results of abstract processes of collecting and analyzing information, without more* (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. . . .

Elec. Power, 830 F.3d at 1353–54 (emphases added).

Claims 1, 15, and 21 "fall into a familiar class of claims 'directed to' a patent-ineligible concept." *Elec. Power*, 830 F.3d at 1354. Contrary to Appellant's arguments (App. Br. 10–12), the claims are similar to the claims of *Electric Power,* and are focused on the combination of abstract-idea processes or functions. *See Elec. Power*, 830 F.3d at 1354. Claim 1 is directed to receiving or collecting information (the "receiving . . ." step), analyzing information (the "comparing . . . identifying . . . generating . . . and determining . . ." steps), and displaying certain results of the collection and analysis (the display element in the generating and determining steps). *See Elec. Power*, 830 F.3d at 1353. Similarly, claim 15 is directed to receiving or collecting information (the "receiving . . ." step), analyzing information (the "determining . . . comparing . . . and providing . . ." steps), and displaying certain results of the collection and analysis (the display element in the providing step). *See Elec. Power*, 830 F.3d at 1353. Claim 21 is directed to a system implementing similar functions. *See* Claim 21.

Regarding Alice step 2, contrary to Appellant's assertion (App. Br. 12–19), Appellant has not shown the claims in this case require an arguably inventive set of components or methods, or invoke any assertedly inventive programming. *See Elec. Power*, 830 F.3d at 1355.

Further, contrary to Appellant's arguments (App. Br. 12–19), the claims are similar to the claims of *Electric Power,* because they do not require any non-conventional computer, network, or display components, or even a "non-conventional and non-generic arrangement of known, conventional pieces," but merely call for performance of the claimed

information collection, analysis, and display functions on generic computer components and display devices. *See Elec. Power*, 830 F.3d at 1355; *see also* Claim 1 (reciting "a microprocessor executable political-orientation social networking module" for performing the "receiving . . . comparing . . . identifying . . . generating . . . and determining . . ." steps; and reciting "for display by the actual user's communication device . . . the actual user's communication device for display . . . ."); Claim 15 (reciting a "microprocessor executable member profile module" and a "microprocessor executable comparison module" for performing the "receiving . . . determining . . . comparing . . . and providing . . ." steps; and reciting "a selected actual user's communication device for display . . . ."); Claim 21 (reciting "a microprocessor executable political-orientation social networking module operable to . . . receive . . . determine . . . compare . . . and provide . . ."; and reciting "the selected actual user's communication device for display . . . .").

In short, Appellant has not shown the claims, read in light of the Specification, require anything other than conventional computer, network, and display technology for gathering, analyzing, sending, and presenting the desired information. *See Elec. Power*, 830 F.3d at 1354. Such invocations of computers and networks that are not even arguably inventive are "insufficient to pass the test of an inventive concept in the application" of an abstract idea. *See Elec. Power*, 830 F.3d at 1355.

Finally, Appellant's interpretation (App. Br. 18–19) of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) is incorrect. In *DDR Holdings,* the Court found:

the claims at issue here specify how interactions with the

> Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Instead of the computer network operating in its normal, expected manner by sending the website visitor to the third-party website that appears to be connected with the clicked advertisement, the claimed system generates and directs the visitor to the above-described hybrid web page that presents product information from the third-party and visual "look and feel" elements from the host website. When the limitations of the '399 patent's asserted claims are taken together as an ordered combination, the claims recite an invention that is not merely the routine or conventional use of the Internet.

DDR Holdings, 773 F.3d at 1258–59.

This case is materially different from *DDR* because as discussed above, the claims here recite inventions that are merely the routine or conventional use of the technology—the opposite of what the claims of DDR represent. *See DDR Holdings,* 773 F.3d at 1258–59.

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner's rejection of independent claims 1, 15, and 21.

We also sustain the Examiner's rejection of corresponding dependent claims 2–14, 16–20, 22, and 23, as Appellant does not advance separate substantive arguments about those claims.

35 U.S.C. § 103

On this record, the Examiner did not err in rejecting claim 1.

Appellant contends the cited references do not collectively teach

> generating, for transmission over the Internet to the actual user's communication device for display by the actual user's communication device, a visual map comparing a degree of similarity and/or dissimilarity between the selected actual user

> and at least one of a aggregate user and an actual user with a distance between an icon representing the selected actual user and an icon representing the at least one of a aggregate user and an actual user being related to the at least one of a degree of similarity and dissimilarity between the selected actual user and the at least one of an aggregate user and an actual user,

as recited in claim 1. *See* App. Br. 20–22.

Appellant has not persuaded us of error. Claim 1 recites:

> based on the identifying step, performing, by the microprocessor executable political-orientation social networking module, *at least one of the following steps:* (i) generating, for transmission over the Internet to the actual user's communication device for display by the actual user's communication device, a visual map comparing a degree of similarity and/or dissimilarity between the selected actual user and at least one of a aggregate user and an actual user with a distance between an icon representing the selected actual user and an icon representing the at least one of a aggregate user and an actual user being related to the at least one of a degree of similarity and dissimilarity between the selected actual user and the at least one of an aggregate user and an actual user ("Generating Step"); and (ii) determining a characteristic of an aggregate user based on an average of the characteristic among the members of the selected set of the plurality of actual users and comparing the characteristic of actual users to the characteristic of the aggregate user for transmission over the Internet to the actual user's communication device for display by the actual user's communication device to the selected actual user, wherein the plurality of actual users is a subset of all actual users, and wherein the aggregate user is not representative of all of the actual users ("Determining Step").

Claim 1 (emphasis added).

Therefore, claim 1 requires at least one of the Performing Step or the Determining Step. Because the Examiner finds—and Appellant does not

dispute—the cited references teach the Determining Step (Ans. 9–10), Appellant has not shown the Examiner erred.

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner's rejection of independent claim 1.

We also sustain the Examiner's rejection of corresponding dependent claims 2–4, 6, 7, and 11–14, as Appellant does not advance separate substantive arguments for those claims.

Regarding dependent claim 5, Appellant argues the cited reference do not collectively teach "wherein the one or more selected objects comprise one or more of a political party platform, a political issue, a ballot, and an aggregate user." *See* App. Br. 23–25. In particular, Appellant contends Macadaan's paragraph 58 "refers to an image of the President. The president is not one or more of a political party platform, a political issue, a ballot, and an aggregate user." App. Br. 24. In response, the Examiner finds Macadaan teaches "a political issue" because "**Macadaan** explains selecting an image of the President of the United States may produce feeds related to the most popular current political issues." Ans. 10. Appellant does not dispute that finding. Therefore, and for similar reasons discussed above with respect to claim 1, we sustain the Examiner's rejection of dependent claim 5.

DECISION

We affirm the Examiner's decision rejecting claims 1–23 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1–7 and 11–14 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED