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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/026,523	02/14/2011	Nagesh RAJOPADHYE	D10-161-02384-00-US	5038
79340	7590	11/27/2018	EXAMINER	
MANNAVA & KANG, P.C. 3201 Jermantown Road SUITE 525 FAIRFAX, VA 22030			BYRD, UCHE SOWANDE	
			ART UNIT	PAPER NUMBER
			3624	
			NOTIFICATION DATE	DELIVERY MODE
			11/27/2018	ELECTRONIC

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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* NAGESH RAJOPADHYE

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Appeal 2017-000998  
Application 13/026,523<sup>1</sup>  
Technology Center 3600

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Before LARRY J. HUME, JAMES W. DEJMEK, and  
SCOTT B. HOWARD, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–21. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> Appellant identifies Accenture Global Services Limited as the real party in interest. App. Br. 3.

## STATEMENT OF THE CASE

### *Introduction*

Appellant's disclosed and claimed invention is generally directed to a brand impact verification (BIV) system to be used during the development phase of a utilization-related software application (URSA). Spec. ¶ 7. According to the Specification, a utilization-related software application is a software application that may be used by a company and its customers, but is not a product in the company product line or a company website. Spec. ¶ 23. As an example, a company selling vehicles may develop a software application that allows its customers to obtain financing online. Spec. ¶ 4. A goal of the disclosed invention is to maintain brand characteristics and integrity during the development of the URSA. Spec. ¶¶ 5–6, 25–26. Examples of brand characteristics may include logos, color schemes and visual appearance. Spec. ¶ 26.

Claim 1 is illustrative of the subject matter on appeal and is reproduced below with the disputed limitations emphasized in *italics*:

1. A system to perform brand impact verification (BIV) for a utilization-related software application (URSA), associated with an identity and a software development process (SDP) including multiple phases, the system comprising:

a requirements-design module to determine modeling data including brand characteristics of a brand associated with the identity, software application properties associated with the URSA, and desired benchmarks for design test results, wherein the desired brand characteristics comprise a visual desired brand characteristic, and the visual desired brand characteristic comprises at least one of a color index, a defined pigmentation and modalities of chromaticity ranges defining a color; and

a BIV testing engine, executed by a computer system, to

identify design test procedures to produce design test results associated with a brand impact being verified based on the determined brand characteristics and the determined software application properties, and

*implement the design test procedures on the URSA to generate the design test results in an SDP design step of an SDP of the URSA,*

verify the brand impact for the URSA, the verifying comprising:

comparing the generated design test results with the desired benchmarks associated with the determined brand characteristics, wherein the generated design test results include a visual design test result comprising at least one a color index, a pigmentation and a modality of chromaticity ranges determined for the URSA, and the comparing of the generated design test results with the desired benchmarks comprises comparing the visual desired brand characteristic with the visual design test result, and

comparing the generated design test results with the determined software application properties,

*generate feedback data to select alternate modeling data responsive to a failure of the generated design test results to reach the desired benchmarks, and*

generate outcome data to report the verification responsive to the generated design test results reaching the desired benchmarks,

*wherein the design test procedures are implemented in the SDP in a SDP design step prior to implementing an SDP full implementation test step testing a full implementation of the URSA.*

*The Examiner's Rejections*

1. Claims 1–21 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 2.
2. Claims 1–4, 6–14, and 16–21 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Gottfried (US 2010/0185520 A1; July 22, 2010) and Sai et al. (US 2007/0172113 A1; July 26, 2007) (“Sai”). Final Act. 3–15.
3. Claims 5 and 15 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Gottfried, Sai, and Cristol (US 2005/0256844 A1; Nov. 17, 2005). Final Act. 15–17.

ANALYSIS<sup>2</sup>

*Rejection under 35 U.S.C. § 101*

Appellant disputes the Examiner’s conclusion that the pending claims are directed to patent-ineligible subject matter. App. Br. 10–24; Reply Br. 2–10. In particular, Appellant argues the Examiner erred in concluding the claims are directed to an alleged abstract idea (*see, e.g.*, Final Act. 2). App. Br. 12–14; Reply Br. 2–5. Instead, Appellant asserts the claims are directed to a technical solution of “controlling the inclusion of visual brand characteristics in a software application during development of the software.” App. Br. 12; Reply Br. 5. Further, Appellant argues the purported abstract idea is an overgeneralization of the claims and that the

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<sup>2</sup> Throughout this Decision, we have considered the Appeal Brief, filed January 22, 2016 (“App. Br.”); the Reply Brief, filed October 21, 2016 (“Reply Br.”); the Examiner’s Answer, mailed August 25, 2016 (“Ans.”); and the Final Office Action, mailed April 2, 2015 (“Final Act.”), from which this Appeal is taken.

Examiner does not consider many of the claim limitations. App. Br. 13–18; Reply Br. 4. Moreover, Appellant asserts the claims recite significantly more than the alleged abstract idea. App. Br. 19–23; Reply Br. 8–10.

Under the Supreme Court’s two-step framework, if a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially-recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). If so, the second step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception. As part of the “directed to” inquiry of step one, we must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Tex. v. DirecTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016). If the claims are not directed to an abstract idea, the inquiry ends. *See McRO, Inc. v. Bandai Namco Games Am.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016).

Although the independent claims each broadly fall within the statutory categories of patentability, the Examiner concludes the claims are directed to a judicially recognized exception—i.e., an abstract idea. Final Act. 2. In particular, the Examiner concludes the claims are directed to the abstract idea of “comparing data to determine the effectiveness of a brand.” Final Act. 2. The Examiner considers the proffered abstract idea a fundamental economic practice (i.e., effective advertising) “because the claims are foundationally related to ecommerce and agreements between people in the form of contracts, legal obligations, and business relations.” Ans. 7.

Additionally, the Examiner considers the claimed invention “a method[] of organizing human activity . . . and comparing new and stored information and using rules to identify options.” Ans. 7. Further, the Examiner concludes the claims do not recite significantly more to transform the abstract idea into a patent eligible application. Final Act. 2; Ans. 9. Instead, the claims recite generic computer functions/elements performing generic computer functions that are well-understood, routine, and conventional. Final Act. 2; Ans. 9.

Here, we disagree with the Examiner that the character of the claims as a whole is directed to a fundamental economic concept, or is merely a method of organizing human activity. Although the claims collect and compare information (an abstract idea), “an invention is not rendered ineligible for patent simply because it involves an abstract concept.” *Alice*, 134 S. Ct. at 2354. Rather, as Appellant contends, the focus of the claims is on performing testing (i.e., brand impact verification) of software during the software development process. Also, as recited in the claims, if the test results indicate a failure (i.e., an incorrect color scheme is determined), feedback data is provided to select alternate modeling data. *See, e.g.*, claim 1. Thus, compliance to visual desired brand characteristics may be confirmed or corrected during the development process rather than after the software has been fully implemented or deployed. Accordingly, we conclude the claims are not directed to an abstract idea.

For the reasons discussed *supra*, we are persuaded of Examiner error. Accordingly, we do not sustain the Examiner’s rejection of claims 1–21 under 35 U.S.C. § 101.

*Rejections under pre-AIA 35 U.S.C. § 103(a)*

Appellant assert that Gottfried, as relied on by the Examiner, “fails to teach anything related to brand impact design testing during ‘a software development process (SDP) including multiple phases.’” App. Br. 31–34; Reply Br. 11–13. In particular, Appellant argues that rather than testing during the development of a software application, Gottfried describes allowing sponsors to “test new and updated products and services via the Focus Group/Feedback mode.” App. Br. 32 (quoting Gottfried ¶ 29). In other words, the testing described in Gottfried is not testing performed during the software development process, but rather is in the form of feedback on software applications that have already been fully implemented. App. Br. 32–33.

In response, the Examiner states that “data identifying the development process and test plan is simply a label for the development process and test plan and adds little, if anything, to the claimed acts or steps and[,] thus[,] does not serve to distinguish over the prior art.” Ans. 10–11. Further, the Examiner interprets the claimed software development process (SDP) “as a procedure for applying steps that can be functional to any process for measuring the effect or impact of various entities.” Ans. 11. Moreover, the Examiner explains “[t]he claims are not interpreted as disclosing the development of a software, but more of an implementation for steps for measuring the effects of a brand.” Ans. 12. Accordingly, the Examiner finds Gottfried teaches brand verification testing to determine the impact of the brand amongst customers. Ans. 11–12.

Contrary to the Examiner’s proffered explanations, the claims have a temporal limitation in that the design test procedures are implemented “in

a[n] SDP design step prior to implementing an SDP full implementation test step testing a full implementation” of the software being developed.

Claim 1. Additionally, in a section of Appellant’s Specification entitled Definition, Appellant defines the term “software development process (SDP), as used herein, [as] a structured approach to developing and/or constructing a software application [that] may occur in stages prior to completion of the SDP defined by the attainment of a completed software application.” Spec. ¶ 17.

When construing claim terminology during prosecution before the Office, claims are to be given their broadest reasonable interpretation consistent with the Specification, reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). However, the broadest *reasonable* interpretation differs from the broadest *possible* interpretation. *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1383 (Fed. Cir. 2017). The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is “an interpretation that corresponds with what and how the inventor describes his invention in the specification, *i.e.*, an interpretation that is ‘consistent with the specification.’” *Smith*, 871 F.3d at 1382–83 (quoting *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997)).

Here, the Examiner’s interpretations of claim language are not consistent with the Specification. In particular, the claimed software development process describes the process (or model) of software development, often defined by specific phases of development (e.g., planning, design, coding, testing, and deployment). *See* Spec. ¶ 17. The

claims also require the brand impact verification design test procedures to be implemented during the software development process—i.e., prior to deployment.

Gottfried describes an interactive, web-based interface to allow consumers to interact with a sponsor's brand information (i.e., a GraffitiWall®). Gottfried ¶¶ 12–14, Fig. 4, Abstract. According to Gottfried, among the benefits of the described system are to allow companies to reinforce their brand equities, interact with their target audience, and test new and updated products and services. Gottfried ¶ 29. Gottfried also describes interacting with consumers via customized brand avatars. Gottfried ¶ 61.

We agree with Appellant that Gottfried, as relied on by the Examiner, does not teach implementing design test procedures in an SDP design step prior to full implementation of the software application to produce design test results associated with a brand impact being verified on determined brand characteristics as claimed. Additionally, neither Sai nor Cristol is relied on by the Examiner to cure this deficiency. Because it is dispositive that the prior art, as relied on by the Examiner, does not teach or suggest implementing the design test procedures in an SDP design step prior to testing a full implementation of the software application, we need not address other issues raised by Appellant's arguments.

For the reasons discussed *supra*, we do not sustain the Examiner's rejection of independent claim 1 under pre-AIA 35 U.S.C. § 103(a). For similar reasons, we do not sustain the Examiner's rejection under pre-AIA 35 U.S.C. § 103(a) of independent claims 11 and 21, which recite similar limitations. Further, we do not sustain the Examiner's rejections under pre-

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AIA 35 U.S.C. § 103(a) of claims 2–10 and 12–20, which depend directly or indirectly therefrom.

DECISION

We reverse the Examiner’s decision rejecting claims 1–21 under 35 U.S.C. § 101.

We reverse the Examiner’s decision rejecting claims 1–21 under pre-AIA 35 U.S.C. § 103(a).

REVERSED