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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE
THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALESSANDRO M. MEYNARDI,
Jean F. Dubois, Martin Doehring, and C. P. Cheng¹

Appeal 2017-001069
Application 12/915,998
Technology Center 2800

Before BEVERLY A. FRANKLIN, MARK NAGUMO, and
MONTÉ T. SQUIRE, *Administrative Patent Judges*.

NAGUMO, *Administrative Patent Judge*.

DECISION ON APPEAL

Alessandro M. Meynardi, Jean F. Dubois, Martin Doehring, and C. P. Cheng (“Meynardi”) timely appeal under 35 U.S.C. § 134(a) from a non-final Rejection² of all pending claims 1–4, 6–13, and 15–25. We have jurisdiction. 35 U.S.C. § 6.

We reverse.

¹ The real party in interest is identified as Verizon Communications Inc. (Appeal Brief, filed 16 March 2016 (“Br.”), 3.)

² Office Action mailed 2 October 2015 (“Office Action”; cited as “OA”). Several Requests for Continued Examination (“RCE”) under 37 C.F.R. § 1.114 were filed, the last of which on 6 July 2015.

OPINION

A. Introduction³

The subject matter on appeal relates to methods (independent claims 1 and 6) of monitoring power outages of a power grid via network terminal devices, and to a non-transitory computer-readable medium (independent claim 18) comprising instructions to carry out such a process.

The '998 Specification explains that the power grid that transmits electrical power includes a network of transmission lines, power generation stations, and various users. (Spec. 1 [0001].) The power to the users may be disrupted from time to time by various causes. According to the Specification,

[p]ower providers (e.g., utilities, power utilities, cooperatives, etc.) usually respond to an outage in a reactive manner based on calls received from customers indicating that power has been lost and/or calls received from local, state or federal first responders associated with an incident potentially affecting the power grid (e.g., a vehicle hitting an electric pole, etc.).

(*Id.* at [0002].) Similarly, the Specification teaches that “[g]enerally, restoration of service is confirmed based on calls to and/or from customers in areas affected by the outage and/or based on physical inspections by field force personnel.” (*Id.*) As a result, power providers “may experience delay when detecting an outage, isolating a cause of the outage, restoring power in response to the outage, and/or confirming that power has been restored when

³ Application 12/915,998, *Remote power outage & restoration notification*, filed 29 October 2010. We refer to the “'998 Specification,” which we cite as “Spec.”

calls are not received from customers and/or when relying on maintenance crews to perform the physical inspections.” (*Id.* at [0002].)

The Specification discloses methods, intended to alleviate these problems, in which network terminal devices (i.e., devices connected to a network, that are also connected to the power grid) report, to a network server, power outages from the power grid. (*Id.* at 5 [0017].) The instances of outages are recorded by the server along with other data such as the geographic and grid location of the affected terminal, and the time of the outage. (*Id.* at 6–7 [0019].) This data enables further analysis, such as the number and place of the outages, and the rate at which terminals are losing power. (*Id.* at 7 [0020].) In the claimed methods, the server provides “indications” of individual power outages, and a further indication if a threshold rate of outage occurrences has occurred. (*Id.* at 9–10 [0024].)

Claim 1 is representative and reads:

A method comprising:

receiving, by a server device and from a *first network terminal device installed at a customer premise*, an alert that the first network terminal device has lost primary power from a power grid;

analyzing, by the server device, the alert and a plurality of alerts received from a plurality of respective network terminal devices;

determining, by the server device and based on the analysis, whether a power outage of the power grid has occurred;

outputting, by the server device, an indication of the power outage when the power outage is determined to occur;

determining that a quantity of other network terminal devices, that have lost primary power from the power grid, is increasing at a rate that is greater than a threshold, wherein the rate is based on a first quantity of the other network terminal devices that have lost primary power at a present point in time and a second quantity of the other network terminal devices that have lost primary power at a prior point in time; and outputting another indication that an outage event has been triggered based on the determination that the rate is greater than the threshold.

(Claims App., Br. 22; some indentation, paragraphing, and emphasis added.)

The Examiner maintains the following ground of rejection^{4, 5, 6, 7}:

Claims 1–4, 6–13, and 15–25 stand rejected under 35 U.S.C. §101 as being drawn to judicially excepted subject matter.

B. Discussion

The Board’s findings of fact throughout this Opinion are supported by a preponderance of the evidence of record.

Meynardi raises arguments for patentability solely on the basis of limitations recited in claim 1. Arguments for the patentability of the

⁴ Examiner’s Answer mailed 25 August 2016 (“Ans.”).

⁵ Because this application was filed before the 16 March 2013, effective date of the America Invents Act, we refer to the pre-AIA version of the statute.

⁶ The Examiner states that the appealed claims would be patentable over the prior art if the rejection under 35 U.S.C. § 101 were overcome. (Ans. 6–7.)

⁷ Meynard (Br. 10–13) also seeks review of objections to claims 1, 6, 8, 9, and 18 (OA 2–3). We do not, however, have jurisdiction over objections to the claims, review of which is by petition under 37 C.F.R. § 1.181.

remaining independent claims (Br. 19, last para.), and for all dependent claims (*id.* at 20, 1st para.), are expressly cumulative with the arguments for claim 1. We therefore limit our discussion to claim 1.

The Supreme Court’s decision in *Alice*⁸ identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. In step one, a determination is made as to whether the claims are directed to an “abstract idea.” If so, in step two, the claims are analyzed to determine whether there are other elements or combinations of other elements that amount to “significantly more” than the abstract idea itself. If all the non-abstract elements, considered individually and as the “ordered combination” recited in the claim, are well-understood, routine, or conventional in the art, and they do not, for example, effect an improvement in the technology or technical field, then they are “not ‘enough’ to transform an abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2359–60.

Meynardi urges that the Examiner’s determination that the claims are directed to the abstract idea of analyzing alerts to determine whether a power outage has occurred are not based on evidence, but are merely expressions of an opinion. (Br. 14, ll. 9–12.)

While the discussions in the Office Action are terse, the Examiner determined that the steps of receiving of data and the outputting of “indications” are insignificant extra-solution activities (OA 6, ll. 9–10), while the intermediate steps of characterizing and analyzing the data are

⁸ *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014).

abstract ideas (*id.* at 4–6). The further “evidence of court findings” (Ans. 5, ll. 3–4) is not, speaking strictly, “evidence” of what persons skilled in the relevant arts would have understood claim terms to mean, or how the recited steps would have been performed, etc. Rather, the court decisions illustrate how the courts have applied terms such as “mental processes” to analyzing data and making determinations based on that data. Meynardi’s generalized procedural complaints regarding the step one determination are not persuasive of harmful error.

We therefore proceed to consider Meynardi’s criticisms of the step two analysis, the most significant of which is the argument that,

the features of claim 1 are not well-understood, routine and conventional in the field. That is, the features of claim 1 allow customer premise equipment (e.g., a network terminal device) to be used to detect and report a power outage. . . . Using network terminals in this manner is not well understood, routine or conventional in this art. That is, power providers do not use such information when identifying an outage event

(Br. 18, ll. 14–19.)

Although the Examiner finds that “[t]he feature that is well-understood, routine and conventional in the field is the server (memory/processor)” (Ans. 9, ll. 20–21), the Examiner does not address the alleged status of the network terminal device that detects and reports the power outage as being not well understood, not routine, and not conventional in the art of the power grid. While it might be objected that Meynardi does not support its denial that such network terminal devices are not well-understood, routine, and conventional with citations to evidence of record, it has not escaped our attention that Meynardi’s position is not

inconsistent with the characterization of the state of the art in the Specification at page 1, paragraph [0002], discussed *supra* at 2.⁹ It is well-settled that the representations of a Specification are presumed to be accurate and enabled, the initial burden lying on the PTO to demonstrate a reasonable basis to doubt the accuracy of the disclosure of the invention. *See, e.g., In re Marzocchi*, 439 F.2d 220, 224 (CCPA 1971) (“it is incumbent upon the Patent Office, whenever a rejection on this basis is made, to explain why it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable evidence or reasoning which is inconsistent with the contested statement.”). Moreover, as our reviewing court has explained more recently, whether an element is well-understood, routine, or conventional is a fact issue, and must therefore be supported by the preponderance of the evidence. *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), *pet. reh’g en banc den’d*, 890 F.3d 1369 (Fed. Cir. 2018); Comm’r Patents Memorandum, *Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.)* (19 April 2018).

⁹ The disclosures at pages 11–12, paragraphs [0028]–[0031], describing the overlapping capabilities of many of the components of devices illustrated by Figure 2 that are connected to the network, including set top boxes, processors, and servers, and at pages 13–16, paragraphs [0032]–[0038], describing the network terminal illustrated in Figure 3, indicate the sophistication and functional flexibility of various components of the system in which the claimed process is conducted. We decline to undertake an investigation of these disclosures *de novo* regarding the extent to which they reveal the state of the art versus novel disclosure. Such an inquiry is highly fact-specific, and, to be reasonably complete, would require familiarity with state of the art that we consider best left, in the first instance, to the expertise and the sound discretion of the Examiner and Appellants.

On the present record, the Examiner has failed to come forward with evidence supporting the finding that power-failure reporting network terminals were well-understood, routine, and conventional in the power grid art. Nor has the Examiner established that the Specification is inaccurate in this regard. If such terminals were not in well known, were not in routine use, or were not conventional in the art of power grid monitoring, their modification and use would constitute a physical improvement to that technical field. Such an improvement is perhaps comparable to modifying a known tool, for use in a machine to accomplish a recognized goal. Whether such a modification would be patentable on, for example, obviousness grounds, is a distinct issue from determining patent eligibility under § 101. Accordingly, we are persuaded on the present record that Meynardi has demonstrated harmful error in the appealed rejection.¹⁰

We therefore reverse the rejection under § 101.

¹⁰ Our analysis should not be regarded as exclusive: a rejection under § 101 may be shown to be improper if it can be shown that the step one analysis, that the claim is directed to an abstract idea, is infirm. As the Federal Circuit has instructed, “[w]e therefore look to whether the claims in these patents focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (determining that because the claimed subject matter did not pass step one of the *Alice* analytical framework, it was not necessary to consider step two). Nor should our holding be read as a determination that the claimed subject matter is patent-eligible under § 101. Again, we stress that we neither express nor insinuate any opinion on the ultimate question in this case.

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C. Order

It is ORDERED that the rejection of claims 1–4, 6–13, and 15–25 is reversed.

REVERSED