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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KENT SCHOEN

Appeal 2017-001515
Application 13/316,149¹
Technology Center 3600

Before ST. JOHN COURTENAY III, THU A. DANG, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 4, 5, 7–17, and 19, which constitute all claims pending in the application. Claims 2, 3, 6, and 18 were previously canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellant, the real party in interest is Facebook, Inc. (App. Br. 2).

STATEMENT OF THE CASE

According to Appellant, the claimed invention relates to “providing redacted advertisements, to users of a social networking system” (Spec. ¶ 1). Claim 1, illustrative of the invention and the subject matter of the appeal, reads as follows:

1. A computer-implemented method comprising:
 - storing advertisements in a data store, the advertisements comprising one or more components;
 - identifying a viewing user of an online system to receive an advertisement;
 - selecting, from a plurality of advertisements in the data store for which the viewing user meets one or more targeting criteria, an advertisement from the data store to display to the viewing user, the selected advertisement including a social endorsement;
 - responsive to selecting the advertisement for display to the viewing user and before the advertisement is displayed to the viewing user:
 - determining an age of the viewing user;
 - responsive to determining that the age of the viewing user is less than a threshold age, redacting, by a computer, one or more components of the selected advertisement to produce a redacted advertisement, the redacting comprising:
 - removing one or more selectable links from the selected advertisement
 - based on content on a page associated with the link, and
 - removing the social endorsement from the selected advertisement based on information about a user who provided the social endorsement, wherein removing the social endorsement comprises:
 - removing the social endorsement from the selected advertisement for display to the viewing user, responsive to determining that an age of the user who provided the social endorsement is larger than a second threshold age; and
 - sending the redacted advertisement for display to the viewing user.

The Rejections on Appeal

1. Claims 1, 4, 5, 7–17, and 19 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter (App. Br. 6).
2. Claims 1, 4, 5, 7–15, 17, and 19 stand rejected under pre-AIA 35 U.S.C. § 112, first paragraph as not complying with the written description requirement (*id.* at 12).
3. Claims 1, 4, 5, 11–13, and 17 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Dion (US 2012/0158531 A1; published June 21, 2012), Csaszar (US5,937,404; issued: August 10, 1999), Steelberg (US 2010/0217664 A1; published August 26, 2010), and *Age of Consent Definition*, Adult Novelties Lingerie, <https://web.archive.org/web/20010116133300/http://ageofconsent.com/definitions.htm>, (dated: 16 January 2001)(last visited April 26, 2018) (“Age of Consent”) (*id.* at 15).
4. Claims 7–9, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dion, Steelberg, Age of Consent, and Purvy (US 2011/0258042 A1; published October 20, 2011) (*id.*).
5. Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dion, Csaszar, Steelberg, Age of Consent, and Chien (US 2010/0082360 A1; published April 1, 2010) (*id.*).
6. Claims 14–16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dion, Steelberg, and Age of Consent (*id.*).

ISSUES

The principal issues before us are whether the Examiner erred in finding that:

1. The claimed method comprising the steps of “storing” advertisement, “identifying” a user, “selecting” an advertisement, “determining” an age of the user, “redacting” components of the advertisement, and “removing” endorsement from the advertisement (claim 1) is directed to patent ineligible subject matter.
2. The limitation “determining that an age of the user who provided the social endorsement is larger than a second threshold age” (*id.*) is not supported by Applicant’s disclosure as originally filed.
3. The combination of Dion, Steelberg and Age of Consent teaches or suggests “removing the social endorsement from the selected advertisement . . . responsive to determining that an age of the user who provided the social endorsement is larger than a second threshold age” (*id.*).

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Dion

1. Dion discloses an entertainment system that interacts with users to provide for social networking and/or other services. Abstract. A database of advertisements may be maintained and provide a mapping between particular advertisement to be run when a keyword(s) is detected, etc. ¶ 355. Further, patron may program the system to automatically leave messages upon the occurrence of a particular event. ¶ 357. Because messages may be inappropriate, techniques may be provided for “cleaning” undesirable message. ¶ 362. The system then scans for inappropriate language of content (e.g., when age-appropriate filters are put into place), and partially redact, edit the offending content. ¶ 363. In an example, the entertainment

system asks certain information to identify the user, wherein such information includes, for example, age. ¶ 112.

Steelberg

2. Steelberg discloses a system for generating endorsed advertisements with editorial content. Abstract. The enhancement engine may determine that the search value of certain keyword(s) have a negative effect on the search value, and these terms may then be excluded or removed from the advertisement. ¶ 55. For example, if an endorser is associated closely with a negative term, the endorser may be removed from the advertisement. *Id.*

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments presented in this appeal. Arguments which Appellant could have made, but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). On the record before us, we are not persuaded the Examiner has erred. We adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner’s Answer, and provide the following for highlighting and emphasis.

Rejection Under 35 U.S.C. § 101

Appellant argues the Examiner erred in concluding the claims are directed to an abstract idea and, therefore, constitute patent ineligible subject matter. App. Br. 6–12.² Specifically, Appellant contends “[t]he claims are

² Appellant argues all claims as a group for purposes of the ineligible subject matter rejection, and we choose claim 1 as representative of the group. 37 C.F.R. § 41.37(c)(1)(iv).

beyond mere instructions of implementing targeted advertising on a computer,” but instead “are directed to a particular process for redacting advertisements presented to underage users.” *Id.* at 8. In particular, according to Appellant, the invention’s focus “is on determining when information on an advertisement should be removed or redacted depending on the age of the viewing user.” *Id.* at 9.

Appellant then contends that the claims recite “significantly more” than the judicial exception. *Id.* at 10. In particular, Appellant contends the claimed “removing the social endorsement” step is “not a conventional activity” and “is not disclosed by the cited references.” *Id.* at 11. That is, the claims “are beyond mere instructions of implementing the abstract idea of age appropriate targeted advertising on a computer” (*id.*), because, “[f]or traditional advertising, ... the provider cannot feasibly redact portions of the advertising content based on particular readers/viewers.” *Id.* at 12.

Appellant contends “this invention parallels the decision handed down in *DDR Holdings*, as it solves an Internet-centric problem with a claimed solution that is necessarily rooted in computer technology.” *Id.* at 12, citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014).

Based on the record before us, we are not persuaded of Examiner error.

Under 35 U.S.C. § 101, the Supreme Court has long interpreted the statute to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo*

Collaborative Services v. Prometheus Laboratories, Inc., 132 S. Ct. 1289, 1300 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. The first step is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea, as the Examiner concludes in this case. If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297).

Here, the Examiner concludes that the claims “send targeted ads” and therefore “are directed to Targeted Advertising/Marketing,” and thus, are directed to an “abstract idea.” Ans. 6. As the Examiner concludes, the claimed steps “are similar to the concept of ‘comparing new and stored information and using rules to identify options’ that a court has determined is an example of abstract idea in *SmartGene*.” Ans. 6. (citing *SmartGene, Inc. v. Advanced Biological Labs.*, 555 Fed. Appx. 950, 955 (Fed. Cir. 2014) (“the mental steps of comparing new and stored information and using rules to identify . . . options” are directed to an abstract idea)). We agree.

In particular, the claims recite the steps of “storing” data such as advertisements, “identifying” users to receive the data, “selecting” which of the data (which further includes endorsements) to display, “determining” the age of the user identified, then “redacting” components of the selected data (advertisement), and then sending the redacted data for display, wherein the

redacting comprises removing certain data (links and endorsements) responsive to a comparison of the determined age to a threshold (claim 1). As Appellant concedes, the claims are merely directed to a “process for redacting advertisements” (i.e., data), which comprises determining when data should be removed or redacted based on a comparison of the determined age and a threshold. App. Br. 8–9. That is, representative claim 1 merely recites “storing,” “selecting” “redacting” and “displaying” various data responsive to a comparison of new determined information to stored information (threshold). Claim 1.

As an initial matter, we conclude the claims are directed to storing/collecting and analyzing various data for display. Claims involving data collection and analysis are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016) (holding that “real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results” are directed to a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Here, the analyzing data for redacting/removing of endorsement from displayed data is similar to the abstract idea of manipulating information discussed in *Elec. Power*, wherein the “focus of the asserted claims . . . is on collecting information, analyzing it, and displaying certain results of the collection and analysis.” *Elec. Power Grp.*, 830 F.3d at 1354. “[A]n invention directed to collection, manipulation, and display of data [is] an abstract process.” *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017).

Furthermore, as the Examiner points out, the steps are similar to the concept of “comparing new and stored information and using rules to identify options” in *SmartGene*. Ans. 6 (citing *SmartGene*, 555 F. App’x. 950). We fail to see any meaningful distinction between the concept set forth in *Smartgene*, and the present application’s comparison of determined age of a user (new information) with stored threshold data to identify whether or not (option) to redact endorsements prior to display (App. Br. 8–9).

On this record, we are agree with the Examiner that claim 1 is directed to an abstract idea under step one of *Alice*.

As to *Alice* step two, although Appellant contends the claimed “removing the social endorsement” step is “not a conventional activity” because providers in traditional advertising “cannot feasibly redact portions of the advertising content based on particular readers/viewers” (App. Br. 11–12), “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 134 S. Ct. at 2359. Here, as the Examiner points out, the specification details that “any combination of a generic/existing computer system[] in hardware and/or software” can be programmed to perform the method. Ans. 7 (citing Spec. at ¶¶ 22–24, 51–54). The Examiner specifically points to ¶ 53 of the specification:

[t]his apparatus may be specially constructed for the required purposes, and/or it may comprise a general-purpose computing device selectively activated or reconfigured by a computer program stored in the computer.
Id. (citing Spec. at ¶ 53 (emphasis added)).

Here, we agree with the Examiner's finding that the recited steps are all generic computer functions (i.e., the manipulation and display of data) that are well-understood, routine, and conventional activities previously known to the industry. *Id.* That is, redacting information for display based on the user's age does not add meaningful limitation to the idea of displaying data beyond generally linking the method of manipulating data to a particular technological environment and is not sufficient to transform the claims into a patent-eligible application. *Id.*

Appellant also argues that the claims "do not seek to preempt all methods for redacting/removing inappropriate components of an advertisement" (Reply Br. 6), and thus are patent-eligible. *Id.* at 7. There is no dispute that the Supreme Court has described "the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption." *Alice Corp.*, 134 S. Ct. at 2354. But characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. "The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability" and "[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 134 S. Ct. at 2354). "[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility." *Id.*

For at least the aforementioned reasons, on this record, we sustain the patent-ineligible subject matter rejection under 35 U.S.C. § 101 of claim 1 and claims 4, 5, 7–17, and 19 falling therewith.

Rejection Under § 112, First Paragraph

The Examiner rejects the claims under § 112, first paragraph as failing to comply with the written description requirement (Final Act. 2–4). In particular, the Examiner finds:

Applicant’s specification does not give any examples or provide the necessary steps, flowcharts, and/or the algorithm that performs the claimed “age and an age of a user who provided the social endorsement is larger than a second threshold age” function in sufficient detail such that one of ordinary skill in the art can reasonably conclude that the inventor had possession of the claimed subject matter.

Id. at 3.

In particular, the Examiner finds that Appellant’s specification “only describes the user and the viewing user being the same age.” *Id.* at 3–4.

In response, Appellant contends:

[the claimed] second threshold age is supported in paragraph [0035] of the specification which recites “[i]n one embodiment, the component policy includes an age limit rule that specifies that a viewing user may only view *social endorsements from users of the same age as the viewing user.*” This indicates that the redaction module will prevent any viewing user who is younger than the second threshold age (in this case, the age of the user who provides the social endorsement) from viewing the social endorsement.

App. Br. 13 (emphasis added).

We are not persuaded by Appellant’s arguments because, here, Appellant confirms (*id.*) the Examiner’s finding that Appellant’s specification “only describes the user and the viewing user *being the same age.*” Final Act. 3–4 (emphasis added). That is, nothing in paragraph [0035] referenced by Appellant provides support for “determining that an

age of the user who provided the social endorsement is *larger than a second threshold age.*” Claim 1 (emphasis added).

Our reviewing court guides the written description “must clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (*en banc*) (citation and quotations omitted). Here, we are not persuaded by Appellant’s statements that upon reading the Specification that “a viewing user may only view social endorsements from users of the same age as the viewing user” (Spec. ¶ 1), that those skilled in the art would find support for “determining that an age of the user who provided the social endorsement is larger than a second threshold age.” App. Br. 13.

On this record, we are not persuaded the Examiner erred. Accordingly, we sustain the Examiner’s rejection of representative claim 1, and grouped claims 4, 5, 7–5, 17, and 19 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement.

Rejection Under Pre-AIA 35 U.S.C. § 103(a)

Appellant contends, “the Age of Consent does not disclose removing information ‘responsive to determining that an age of the user who provided the social endorsement is larger than a second threshold age’” as recited. App. Br. 17. According to Appellant, although the Examiner “refers to modifying Dion with Steelberg’s social endorsements to provide a removal of social endorsements,” the cited sections of Steelberg “refers to removing an endorsing who is associated with a negative term” and “not removal of an endorser based on the endorser being above a threshold age.” *Id.* Thus, according to Appellant, the Age of Consent, combined with Dion and

Steelberg, “at best teach removal of an endorser associated with negative content if the *viewer is under the age of consent.*” *Id.*

We have considered all of Appellant’s arguments and evidence presented. However, we disagree with Appellant’s contentions regarding the Examiner’s rejections of the claims. We agree with the Examiner’s conclusion that claim 1 would have been obvious over the combined teachings of Dion, Steelberg and the Age of Consent.

Here, we agree with the Examiner that Dion discloses and suggests “determining an age of the viewing user.” Final Act. 9 (citing Dion ¶ 112); FF 1. We also agree that Dion discloses and suggests “threshold via filters for age-appropriateness and redaction.” *Id.* (citing Dion ¶¶ 362–364). In particular, Dion discloses a system that partially redacts, edits content using age-appropriate filters. FF 1. Thus, we find no error with the Examiner’s reliance on Dion for teaching and suggesting removing data “responsive to determining that an age of [a user] is larger than a . . . threshold age” as recited in claim 1.

Further, we find no error with the Examiner’s reliance on Steelberg for teaching, or at least suggesting, “removing . . . social endorsements based on information about the user who provided the social endorsement.” Final Act. 11; FF 2. In particular, Steelberg discloses excluding or removing content from an advertisement such as removing an endorser from the advertisement. FF 2. Thus, we find no error with the Examiner’s reliance on Steelberg for teaching and suggesting “removing . . . social endorsement from . . . selected advertisement for display to the viewing user,” responsive to determining information about the user who provided the social endorsement, as recited in claim 1.

We also agree with the Examiner’s finding that the Age of Consent teaches or at least suggests determining whether “certain communications between adults and minors are illegal” wherein “it [is] illegal for . . . an adult ‘Who writes or uses vile, obscene, profane or indecent language,’” Final Act. 11–12. Accordingly, we agree with the Examiner that the combination of Dion, Steelberg and the Age of consent teaches or at least suggests the contested limitation.

The Supreme Court has determined that the conclusion of obviousness can be based on the interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge possessed by a person having ordinary skill in the art. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). The skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle.” *Id.* at 420.

Here, we find the skilled artisan would have found it obvious to combine Steelberg’s teaching and suggestion of removing social endorsement from selected advertisement for display to the viewing user (FF 2), with Dion’s teaching and suggestion of removing data responsive to determining that the age of the user (FF 1), wherein the Age of Consent teaches and suggests removing data responsive to determining that the age is larger than a threshold age. Final Act. 11–12. The skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421.

On this record, we find no error with the Examiner’s rejection of claim 1 over Dion, Csaszar, Steelberg, and Age of Consent. Appellant does not provide substantive arguments for claims 4, 5, 7–17, and 19 separate from those of claim 1 (App. Br. 17–18), and thus, we also sustain the

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rejections of claims 4, 5, 11–13, and 17 over Dion, Csaszar, Steelberg, and Age of Consent; of claims 7–9, and 19 over Dion, Steelberg, Age of Consent, and Purvy; of claim 10 over Dion, Csaszar, Steelberg, Age of Consent, and Chien; and of claims 14–16 over Dion, Steelberg, and Age of Consent. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner’s rejections of claims 1, 4, 5, 7–17, and 19 under 35 U.S.C. §§ 101 and 103; and of claims 1, 4, 5, 7–15, 17, and 19 under 35 U.S.C. § 112.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED