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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREW LINN, DOUGLAS W. CRISMAN,
KELLY McKIERNAN, G. KENT PLUNKETT,
and STEPHEN SCHOONOVER

Appeal 2017-001525¹
Application 12/477,073²
Technology Center 3600

Before DENISE M. POTHIER, JOHN P. PINKERTON, and
JOHN D. HAMANN, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants file this appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 11 and 13–18. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Our Decision relies upon Appellants' Appeal Briefs ("App. Br.," filed Dec. 22, 2015 and Apr. 8, 2016), Reply Brief ("Reply Br.," filed Nov. 8, 2016), and Specification ("Spec.," filed June 2, 2009), as well as the Examiner's Answer ("Ans.," mailed Sept. 8, 2016) and the Final Office Action ("Final Act.," mailed July 22, 2015).

² According to Appellants, the real party in interest is Kenexa Technology. App. Br. 1.

THE CLAIMED INVENTION

Appellants' claimed invention relates to managing a job model workflow, including requesting and receiving feedback relating to competencies and attributes of a job model. Spec. 2–3. Claim 11 is representative of the subject matter on appeal and is reproduced below.

11. A computerized method relating to a job model, the method comprising:

creating, by a server computer, a data structure related to the job model in a data store coupled to the server computer;

populating, by the server computer, the data structure with a first data object representing one or more competencies of the job model and a second data object representing an attribute of the job model;

creating, by the server computer, a first feedback request requesting feedback relating to the one or more competencies;

sending, by the server computer, the first feedback request to a first set of reviewers,

receiving, by the server computer, feedback relating to the one or more competencies from at least a subset of the first set of reviewers;

updating, by the server computer, the data structure to include a third data object representing the received feedback to the first feedback request;

updating, by the server computer, the first data object as a function of the received feedback to the first feedback request once a predetermined level of feedback to the first feedback request is received from the first set of reviewers;

creating, by the server computer, a second feedback request requesting feedback relating to the one or more competencies and the attribute;

sending, by the server computer, the second feedback request to a second set of reviewers, the first set of reviewers or the second set of reviewers being user defined, wherein at least one reviewer of the second set of reviewers is different from the first set of reviewers;

updating, by the server computer, the data structure to include a fourth data object representing the received feedback to the second feedback request;

updating, by the server computer, the first data object or the second data object as a function of the received feedback to the second feedback request; and

publishing, by the server computer, at least a portion of the data structure to an application.

REJECTIONS ON APPEAL

(1) The Examiner rejected claims 11 and 13–18 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 5–6.

(2) The Examiner rejected claims 11, 13, 16, and 18 under 35 U.S.C. § 103(a) as being unpatentable over the combination of McGovern et al. (US 2008/0027747 A1; published Jan. 31, 2008) (hereinafter “McGovern”), Massand (US 2004/0085354 A1; published May 6, 2004), and Ivanov (US 5,706,452; issued Jan. 6, 1998). Final Act. 7–13.

(3) The Examiner rejected claims 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over the combination of McGovern, Massand, Ivanov, and Neece et al. (US 2003/0037032 A1; published Feb. 20, 2003) (hereinafter “Neece”). Final Act. 13–15.

(4) The Examiner rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over the combination of McGovern, Massand, Ivanov, and Dutta (US 2006/0026502 A1; published Feb. 2, 2006). Final Act. 15–16.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ contentions that the Examiner erred. Appellants argue the pending claims as a group, with independent claim 11 being representative. *See* App. Br. 9, 14, 21, 22. Thus, we decide the appeal of the rejections on the basis of representative claim 11. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986). We disagree with Appellants’ contentions for the reasons discussed below.

(1) § 101 Rejection

Appellants contend the Examiner improperly rejected claim 11 under 35 U.S.C. § 101. *See* App. Br. 9–13; Reply Br. 2–5. According to Appellants, the claims do not concern an abstract idea, and even if they did, the claims would be patent eligible because the claims amount to significantly more than an abstract idea. *See* App. Br. 10–11, 13. We find Appellants’ arguments unpersuasive.

Section 101 of the Patent Act provides that “[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. The Supreme Court has explained that this provision is subject to a long-standing, implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). The Court has set forth a two-part inquiry to determine whether this exception applies. First, we must determine if the claim at issue is directed to one of those patent-ineligible concepts. *Alice*, 134 S. Ct. at 2355. Second, if the claim is directed to one

of those patent-ineligible concepts, we must consider the elements of the 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.” *Alice*, 134 S. Ct. at 2355 (quotation marks omitted) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72 (2012)).

(i) *Abstract ideas*

We first consider whether the Examiner properly concludes the claims are directed to one or more abstract ideas. For example, the Examiner concludes that the claims are directed to the abstract ideas of “organizing human activity” and “data gathering” relating to “managing relationships or transactions between people.” Ans. 13–14. The Examiner finds that these abstract ideas are “similar to [b]uyS[AFE] where [a] contract type relationship is being formed between the requestor and the provider of feedback.” *Id.* at 14 (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014)).

Appellants argue that “the Examiner has not identified anything within the claims as being an abstract idea.” App. Br. 10; *see also* Reply Br. 2–3. More specifically, Appellants argue that the Examiner “produced neither evidence nor analysis to establish that” claim 11 was directed to organizing human activity. Reply Br. 2. Appellants also argue that the Examiner “treats some of the steps in [i]solation” and “fails to consider the claimed invention, as a whole.” *Id.* at 3. Appellants also dispute that claim 11 is directed to “a ‘contractual relationship’ or anything remotely close,” as in *buySAFE*. *Id.* Lastly, Appellants argue that the claim limitations “are

neither an ‘idea’ nor ‘abstract.’ Instead, these are activities performed, using a computer, on a computer data structure.” App. Br. 10–11.

Appellants have not persuaded us that the Examiner errs. The Federal Circuit has explained that the abstract-idea inquiry requires “looking at the ‘focus’ of the claims, their ‘character as a whole,’” to determine if the claims are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). We agree with the Examiner that the focus of claim 11 is directed to the abstract ideas of organizing human activity and data gathering, which are akin to at least the claims in *Electric Power*, which “though lengthy d[id] not go beyond requiring the collection, analysis, and display of available information in a particular field, stating those functions in general terms, without limiting them to technical means for performing the functions that are arguably an advance over conventional computer and network technology.” 830 F.3d at 1351.

We find that *Electric Power* is sufficiently analogous to establish that the instant claims are directed to an abstract idea. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (explaining that when determining whether claims are directed to an abstract idea, “both this court and the Supreme Court have found it sufficient to compare [the] claims at issue to those claims already found to be directed to an abstract idea in previous cases”). Furthermore, we also find that *buySAFE* supports the Examiner’s finding that claim 11 is drawn to an abstract idea because claim 11 is directed to human interactions to further job hiring, which is a familiar commercial transaction. *See buySAFE*, 765 F.3d at 1354–55.

(ii) *Inventive concept*

We next consider whether the Examiner correctly concludes that claim 11 does not “include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as an ordered combination do not amount to significantly more than the abstract idea.” Ans. 14. The Examiner finds that claim 11 recites having a server computer for “creating, populating, sending, receiving, updating[,] and publishing information within [a] data structure” (i.e., storing data). *Id.* The Examiner finds that “[t]he server computer is recited at a high level of generality (including a processor, memory and data store . . .) for performing generic computer functions routinely used in computer applications.” *Id.* The Examiner finds that in claim 11 “[t]here is no indication that the combination of elements improves the functioning of a computer or improves any other technology.” *Id.* at 15. The Examiner concludes that the claims thus do not amount to significantly more than the abstract ideas. *Id.* at 14–15.

Appellants contend that the Examiner’s finding that claim 11 recites “‘generic computer functions’ . . . is factually unsupported.” Reply Br. 5 (citing *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016)). Appellants also argue that “the Examiner’s analysis does not meet the requirements described within the 2014 [Interim Guidelines on Patent Subject Matter Eligibility] or the 2015 Guidelines Update.” App. Br. 13.

We agree with the Examiner that claim 11 does not amount to significantly more than the abstract ideas. Rather, claim 11 simply recites generic computer components (e.g., a server computer) and functions (e.g.,

creating data structures, populating data structures, and sending, requesting, receiving, updating, and publishing data). *See buySAFE*, 765 F.3d at 1355 (finding the invocation of computers and generic functionality adds no inventive concept). Moreover, nothing in the claims, understood in light of the Specification (*see, e.g.*, Spec. 2 (disclosing “a server computer including a processor and associated memory, a data store”), 32–33) requires anything other than off-the-shelf, conventional computers and devices used for creating, collecting, storing, updating, and displaying various data.

Appellants’ claim 11 is akin to a generic computer programmed with conventional steps to be carried out by a generic computer (i.e., “apply it with a computer”), and, thus, fails to provide an inventive concept. *See Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1332 (Fed. Cir. 2015) (quoting *Alice*, 134 S. Ct. at 2358) (finding an inventive concept “requires more than simply stating an abstract idea while adding the words ‘apply it’ or ‘apply it with a computer’”).

We also are not persuaded by Appellants’ argument (e.g., App. Br. 11–12; Reply Br. 5) that the claims pose no risk of preempting the abstract idea itself. A lack of preemption does not make a claim patent eligible. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

For the above reasons, we sustain the Examiner's § 101 rejection of representative claim 11, as well as claims 13–18, grouped therewith.

(2) § 103 Rejections

(i) *Non-analogous prior art*

Appellants argue that Massand and Ivanov are non-analogous art to “[t]he claimed invention[, which] is within the field of electronic employment systems.” App. Br. 14–15. Appellants also argue that “the Examiner only alleges that Ivanov and Massand are in ‘similar fields’ to the claimed invention[, which] does not meet the requirement of being within the ‘same’ field.” Reply Br. 6 (citing Ans. 15–16, *Wang Labs., Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993)).

Appellants also argue that “the Examiner has not established that either Massand or Ivanov are reasonably pertinent to a known need or problem in the field of endeavor.” *Id.* at 15. More specifically, Appellants argue that “the Examiner presents no evidence that ‘modeling job postings aspects of the invention deal with the review of the job postings by associated stakeholders to ensure the proper requirements’ is a known need or problem in the field of endeavor.” *Id.* (quoting Final Act. 4); *see also* Reply Br. 7.

The Examiner finds Massand and Ivanov are analogous art to the claimed invention because they are in the field of “obtaining document feedback,” like the claimed invention. Ans. 16. More specifically, the Examiner finds that “Ivanov discloses a process for defining and managing document review by a plurality of individuals[,] (see column 1, lines 9-14) and Massand discloses a collaborative document review process.” *Id.* In comparison, the Examiner finds that the claimed invention “deals with

modeling job postings[, including providing for] . . . the review of the job postings by associated stakeholders to obtain feedback from distributed parties.” *Id.* The Examiner concludes that the references and claimed invention are “similar fields in consideration of obtaining document feedback.” *Id.*

In addition, the Examiner also finds that Massand and Ivanov are pertinent to addressing the particular problem of the claimed invention. *Id.* The Examiner finds that the particular problem of the claimed invention concerns “seeking a more automated means to customize job models by obtaining feedback from multiple parties in a distributed fashion.” *Id.* (citing Spec. 2–5).

“Two *separate* tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor’s endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011) (citations omitted) (emphases added).

We find that Massand and Ivanov are reasonably pertinent to the particular problem with which the inventors are involved (i.e., automating means to customize job models by obtaining feedback from multiple parties in a distributed fashion). *See, e.g.*, Massand ¶¶ 237–239 (disclosing obtaining feedback concerning a job shell for a job opening); Ivanov, 1:9–14 (“This invention relates generally to computerized methods of doing business, and in particular to methods for defining and managing the process of document review by a plurality of individuals who assess and express their opinions about portions of a document, and/or contribute new

information to the document.”). We also find that Massand and Ivanov are in the same field of endeavor (e.g., obtaining document feedback) as the claimed invention. Massand ¶¶ 237–239; Ivanov 1:9–14; Spec. 2–5. Appellants’ argument that the Examiner uses the term “similar,” as opposed to “same,” is unavailing because the claimed invention and Massand and Ivanov are from the same field of endeavor, despite the Examiner’s word choice. We also note that the scope of analogous art is to be construed broadly. *See Wyers v. Master Lock Co.*, 616 F.3d 1231, 1238 (Fed. Cir. 2010) (“The Supreme Court’s decision in *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398 . . . (2007), directs us to construe the scope of analogous art broadly.”).

(ii) *Requesting feedback relating to competencies*

Appellants argue that the combination of McGovern, Massand, and Ivanov fails to teach or suggest “creating . . . a first feedback request requesting feedback relating to the one or more competencies,” as recited in claim 11. App. Br. 16–18; Reply Br. 7–8. More specifically, Appellants argue that “[w]hile McGovern may teach sending a feedback request, this feedback request is . . . for feedback on the job opening as a whole – not the ‘feedback relating to one or more competencies,’ as claimed.” App. Br. 16. In other words, “[r]equesting feedback about the ‘job shell’ is not [] necessarily the same as requesting feedback about something that may be contained in the job shell (e.g., ‘one or more competencies’),” according to Appellants. Reply Br. 8; *see also* App. Br. 17. Appellants also argue that the Examiner’s findings that the feedback can encompass “capabilities” is incorrectly based on an unstated inherency, which cannot be established by probabilities or possibilities. *Id.* at 17–18 (citations omitted).

The Examiner finds that McGovern teaches or suggests the disputed limitation. Ans. 16–17; Final Act. 8. In particular, the Examiner finds that “[i]n McGovern, the HR recruiter creates a job shell including various information regarding a job position and after creating the shell the system sends an email to a hiring manager to provide feedback on the job shell.” Ans. 16 (citing McGovern ¶¶ 237–241). The Examiner finds that McGovern teaches that “[t]he hiring manager may edit different aspects of the job shell such as skills, experience and general requirements related to job requirements and capabilities. These items could be used to assess an individual’s competency in a particular area. A competency could encompass almost any job attribute, skill, education, etc.” *Id.* at 16–17.

We agree with the Examiner that McGovern teaches or suggests the disputed limitation. More specifically, we find that McGovern teaches requesting feedback relating to the one or more competencies. *See* McGovern ¶¶ 237–241. For example, McGovern teaches informing a hiring manager once a job shell has been created (e.g., sending an email with a link to the job shell to the hiring manager) so that the hiring manager can provide edits (i.e., feedback) to the job shell. *Id.* ¶ 238. More specifically, the hiring manager can edit the information in the job shell, including the job opening’s general requirements and “experience requirements[,] includ[ing] one or more desired skills or experiences which are to be matched against those entered by potential candidates.” *Id.* ¶¶ 239–240; *see also id.* ¶ 237 (teaching that the job shell can include any suitable job opening information, such as “a requested education level,” “a work authorization level (e.g., U.S. citizen, work visa, etc.),” “a security clearance level,” “languages spoken,” or “preferred prior employers”). “[T]he hiring manager [also] can prioritize

the skills/experience information” *Id.* ¶ 241. These teachings from McGovern (e.g., experience requirements, including desired skills or experiences) are within the broadest reasonable interpretation of competencies. *Id.* ¶¶ 237–241; *see also* Spec. 16 (“Competencies are the desired groupings of knowledges, skills, and/or abilities that can, through observable behavior, define the attributes of a particular individual to meet the requirements of a specific job.”).

In addition, we find Appellants’ arguments that the requested feedback is “on the job opening as a whole,” rather than for “one or more competencies,” unavailing. Simply put, requesting feedback on a job shell covers requesting feedback on the information (e.g., competencies) included in the job shell. Furthermore, we disagree that the Examiner relies on inherency. McGovern explicitly discloses requesting feedback on a job shell, including feedback on a job posting’s listed experience requirements, including desired skills or experiences. McGovern ¶¶ 237–241. For example, McGovern teaches that the hiring manager “edits the experience requirements,” which preferably “include one or more desired skills or experiences.” *Id.* ¶ 240.

(iii) Sending feedback request to a first set of reviewers

Appellants argue that the combination of McGovern, Massand, and Ivanov fails to teach or suggest “sending, by the server computer, the first feedback request to a first set of reviewers,” as recited in claim 11. App. Br. 18–19; Reply Br. 10. More specifically, Appellants argue that “McGovern only teaches that the feedback is sent to a single reviewer (i.e., the hiring manager) – not a set of reviewers, as claimed.” App. Br. 18. As to Massand, Appellants argue that it “teaches ‘a number of users’ are invited

‘to become reviewers of the document.’ Reviewing a document, however, is not the same as the particular request for feedback being claimed.” Reply Br. 10. Appellants also argue that “[t]he document review described by Massand is very generic, while the claimed request is very specific, and the teachings of Massand are silent as to the specificity as to the feedback being requested.” *Id.*

The Examiner finds, and we agree, that the *combination* of McGovern, Massand, and Ivanov teaches or suggests the disputed limitation. Ans. 17–18. We agree with the Examiner’s finding that “McGovern teaches sending a request for feedback . . . to one user (e.g. HR manager).” *Id.* at 17 (citing McGovern ¶ 238). We also agree that “Massand discloses inviting a group of users to become reviewers of a document.” *Id.* (citing Massand ¶ 34). The Examiner concludes, and we agree, “it would [have] be[en] obvious to combine the job posting review process of McGovern with the collaborative review system of Massand in order to incorporate a streamlined review process with multiple reviewers.” *Id.* at 18. We note that Appellants incorrectly focus on McGovern’s and Massand’s individual teachings rather than what their *combined* teachings would have conveyed to one of ordinary skill in the art. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references”); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

(iv) *Creating a second feedback request*

Appellants argue that the combination of McGovern, Massand, and Ivanov fails to teach or suggest “creating, by the server computer, a second feedback request requesting feedback relating to the one or more

competencies and the attribute,” as recited in claim 11. App. Br. 19–21; Reply Br. 11. More specifically, Appellants argue that “McGovern only teaches that one request is sent (i.e., a first feedback request). Any assertion that a second feedback request is also sent is based upon speculation – not facts.” App. Br. 20. Appellants also argue that the Examiner fails to address that the second feedback request also relates to feedback on “*the attribute.*” *Id.* at 21.

The Examiner finds, and we agree, that the *combination* of McGovern, Massand, and Ivanov teaches or suggests the disputed limitation. Ans. 17–18. More specifically, we agree with the Examiner that “Massand discloses . . . requesting a second set of users to be reviewers,” and that “first and second request[s] can be sent to different reviewers.” *Id.* (citing Massand ¶¶ 34 (teaching that reviewers can provide suggested changes to the document), 46 (teaching that a second set of reviewers can receive the document for review); *see also* Section (2)(iii) *supra*, (finding that McGovern teaches sending a request for feedback including on one or more competencies).

We also are not persuaded by Appellants’ argument that the Examiner fails to address that the second request relates to feedback for “the attribute.” The Examiner notes, and we agree, that the previous findings address that the second feedback request also relates to *an attribute*. Ans. 18. In particular, we agree with the Examiner’s findings that McGovern’s feedback request (which in accordance with Massand’s teachings can be sent to two sets of reviewers) relates to competencies and “could encompass almost any job attribute.” Ans. 16–17 (citing McGovern ¶¶ 237–241); *see* Section (2)(ii) *supra*. Appellants’ Specification broadly describes attributes as being

“representative of a competency.” Spec. 3. The Specification also provides examples of attributes, which include “job title, job function, job description, job level, behavior statements, writing assistances, learning references, coaching tips, goal statements, interview questions, and competencies.”

Spec. 8. At least some of these attributes are identified in McGovern to be the types of job shell information for which feedback was requested. *See, e.g.,* McGovern ¶ 237 (teaching that the job shell could include, *inter alia*, a job title, a job description, and competencies).

For the above reasons, we sustain the Examiner’s § 103 rejection of representative claim 11, as well as claims 13–18, grouped therewith.

DECISION

We affirm the Examiner’s § 101 rejection of claims 11 and 13–18.

We affirm the Examiner’s § 103 rejections of claims 11 and 13–18.

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