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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MUNISH GUPTA, RAJIV NARANG, AKINTUNDE A. EHINDERO, JENNIFER W. BRUCE, and AHMED TARIQ

Appeal 2017-001655
Application 13/737,492
Technology Center 3600

Before JOHN A. JEFFERY, BRUCE R. WINSOR, and JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellants[1] appeal from the Examiner's decision to reject claims 1, 2, 4–8, 10–14, and 16–18, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b). Claims 3, 9, and 15 were cancelled.

We affirm.

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[1] Appellants identify the real party in interest as Dell Products L.P. App. Br. 1. Dell Products L.P. is the Applicant for the instant patent application. *See* Bib. Data Sheet.

CLAIMED SUBJECT MATTER

Appellants' invention relates a "system and method for analyzing return on investment (ROI) for social commerce interactions." Spec. ¶ 1. Claim 1 is representative and reproduced below:

> 1. A computer-implemented method for analyzing return on investment for social commerce interactions, comprising:
>
> processing a set of user data associated with a set of social media users to generate a first set of social commerce metrics, the set of user data comprising a first set of social media interaction data corresponding to a first set of social commerce interactions with the set of social media users;
>
> processing the set of user data and the first set of social media interaction data to generate a second set of social commerce interactions;
>
> performing the second set of social commerce interactions with the set of social media users to generate a second set of social commerce interaction data;
>
> processing the second set of social commerce interaction data to generate a second set of social commerce metrics; and
>
> processing the first and second sets of social commerce metrics to generate a set of return on investment metrics corresponding to the second set of social commerce interactions; and wherein
>
> the set of user data is processed to generate a social presence map;
>
> the first set of social media interaction data is processed to generate a predictive model; and
>
> the social presence map and the predictive model are processed to generate the first set of social commerce metrics.

REJECTIONS[2]

Claims 1, 2, 4–8, 10–14, and 16–18 stand rejected under 35 U.S.C. § 101, as being directed to ineligible subject matter. Final Act. 2–3.[3]

Claims 1, 2, 4–8, 10–14, and 16–18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Whitney (US 8,291,016 B1; Oct. 16, 2012). Final Act. 4–6.

THE § 101 REJECTION

The Alice/Mayo Framework

The Patent Act defines patent-eligible subject matter broadly: "Whoever 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. There is no dispute in this Appeal that the pending claims are each directed to one of these categories.

In *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 70 (2012), and *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2354 (2014), the Supreme Court explained that § 101 "contains an important implicit exception" for laws of nature, natural phenomena, and abstract ideas. *See Diamond v. Diehr*, 450 U.S. 175, 185 (1981). In *Mayo* and *Alice*, the Court set forth a two-step analytical framework for evaluating

[2] The rejections are under the provisions of 35 U.S.C. in effect before the effective date of the Leahy-Smith America Invents Act of 2011 (AIA). *See, e.g.*, Final Act 2.

[3] Claims 3, 9, and 15 are mistakenly included in the header for this rejection, *see* Final Act. 2, but are indicated by Appellants as cancelled by amendment, *see* Amendment 2, 4, 6 (Mar. 2, 2015). We find the Examiner's typographical error to be harmless.

patent-eligible subject matter: (1) "determine whether the claims at issue are directed to" a patent-ineligible concept, such as an abstract idea; and, if so, (2) "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements" add enough to transform the "nature of the claim" into "significantly more" than a patent-ineligible concept. *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79); *see Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Step one in the *Mayo/Alice* framework involves looking at the "focus" of the claims at issue and their "character as a whole." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Step two involves the search for an "inventive concept." *Alice*, 134 S. Ct. at 2355; *Elec. Power Grp.*, 830 F.3d at 1353. For an inventive concept, "more is required than 'well-understood, routine, conventional activity already engaged in"' by the relevant community. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016) (quoting *Mayo*, 566 U.S. at 79–80).

Step One of the Alice Framework

Turning to step one of the *Alice* framework, we are unpersuaded that the Examiner erred in concluding the claims are directed to an abstract idea. Final Act. 2; Ans. 4. Appellants' only arguments with respect to step one are that "the claims of the present application are unlike that of any of the examples provided by the Court" in *Alice*, including "fundamental economic

practices, principles in the abstract that are a fundamental truth, an original cause or a motive, and mathematical relationships or formulas." App. Br. 4.

Appellants' contention concerning an unfounded requirement that *only* the abstract ideas mentioned in *Alice* are a basis to supporting a § 101 rejection does not persuade us of Examiner error. *See Alice*, 134 S. Ct. at 2357 (recognizing that "we need not labor to delimit the precise contours of the 'abstract ideas' category in this case"); *see also DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (finding "identifying the precise nature of [an] abstract idea is not . . . straightforward"); *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016) (finding "[a]n abstract idea can generally be described at different levels of abstraction"); *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (finding "[a]dding one abstract idea (math) to another abstract idea (encoding and decoding) does not render the claim non-abstract").

The Examiner finds the claims are "directed to the abstract idea of analyzing [ROI] for social commerce interactions; which is considered a fundamental economic practice." Final Act. 2. We agree. Taking independent claim 1 as representative of the claims on appeal, the claimed method recites, in essence, seven distinct steps—(a) generate a social presence map from user data including a first set of social media interaction data; (b) generate a predictive model from the first set of social media interaction data; (c) generate a first set of social commerce metrics from the social presence map and predictive model; (d) generate a second set of social commerce interactions from the user data and first set of social media

interaction data; (e) generate a second set of social commerce interaction data from social media users and the second set of social commerce interactions; (f) generate a second set of commerce metrics from the second set of social commerce interaction data; and (g) generate ROI metrics from the first set of social commerce metrics and second set of social commerce interaction data. Thus, consistent with the preamble of claim 1 that recites a "method for analyzing [ROI] for social commerce interactions," the basic character of the claimed subject matter, as a whole, is focused on generating ROI metrics from social media users.

We find that generating ROI metrics from social media users is a fundamental economic practice. Appellants provide no persuasive argument or evidence showing the claims are not directed to a fundamental economic practice. And because fundamental economic practices are abstract ideas, we agree with the Examiner that the claims are directed to an abstract idea.

Step Two of the Alice Framework

Because we find that the claims are "directed to an abstract idea," we turn to step two of the *Alice* framework to determine whether the limitations, when considered both "individually and 'as an ordered combination"' contain an "inventive concept" sufficient to transform the claimed "abstract idea" into a patent-eligible application. *Alice*, 134 S. Ct. at 2355–58.

We find unavailing both Appellants' comparison of the claims to those of *DDR Holdings* and Appellants' argument that "the claims of the present application are necessarily rooted in computer technology rather than simply implement old ideas on a computer." App. Br. 5. In *DDR Holdings*, the claims specified "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." *DDR Holdings*, 773 F.3d at 1258. The court determined that:

> these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

Id. at 1257. Here, Appellants have not identified a purported "problem specifically arising in the realm of computer networks" solved by the invention. Nor have Appellants pointed to any claim limitation that "overrides the routine and conventional sequence of events." Rather, Appellants' claims merely apply a conventional economic practice of using metrics to determine a return on investment with respect to a particular investment—namely social commerce interactions.

We also find unavailing Appellants' comparison of the claims to those of *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) and Appellants' argument that claim 1's inventive concept is a technological improvement achieved through a particular ordered combination of elements. Reply Br. 3. In *Bascom*, the Federal Circuit found "the limitations of the claims, taken individually, recite generic computer, network and Internet components, none of which is inventive by itself," but "an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces." *Bascom*, 827 F.3d at 1349–50. Claim 1 recites generic components, and Appellants do not provide a persuasive explanation of how or why the

recited ordered combination of these elements amounts to "significantly more," rendering the claimed abstract idea patent-eligible subject matter.

Thus, "the claims at issue amount to 'nothing significantly more' than an instruction to apply the abstract idea . . . using some unspecified, generic computer." *Alice*, 134 S. Ct. at 2360 (citing *Mayo*, 566 U.S. at 79–80). For the above reasons, Appellants have not persuaded us of error in the rejection of the claims under 35 U.S.C. § 101.

THE ANTICIPATION REJECTION

The Examiner finds Whitney discloses every recited element of independent claim 1 including, among other things, processing a social presence map and a predictive model to generate a first set of social commerce metrics. Final Act. 5 (citing Whitney 2:39–44, 8:15–24, 9:38–51, claim 4). Appellants assert Whitney discloses identifying visitors to a website according to a visitor engagement spectrum, but argue Whitney does not disclose generating a social presence map, much less processing the generated social presence map with a predictive model to generate a first set of social commerce metrics. App. Br. 6. We are not persuaded of Examiner error.

As the Examiner explains, Whitney's fan engagement spectrum is processed with a performance prediction of a client's campaign to recommend modifications or courses of action. Ans. 5. We find the Examiner's explanation to be reasonable. Whitney generates actual performance scores for comparison against baseline parameters by scoring visitors using scoring metrics. Whitney 8:10–14, Fig. 3 (step 108). Whitney's visitors are identified and labeled based on a fan engagement

spectrum. *Id.* at 8:15–45, Fig. 4. Whitney's process then aggregates valuations based on predicted performance data. *Id.* at 9:38–46, Fig. 3 (step 110). Whitney's process then compares the predicted performance data with other parameters to recommend modifications to increase parameter performance. *Id.* at 10:22–37, Fig. 3 (step 122). Thus, Whitney discloses processing (1) scoring metrics based on a fan engagement spectrum (the claimed "social presence map") and (2) aggregated valuations based on predicted performance data (the claimed "predictive model") to generate recommended modifications to increase parameter performance (the claimed "first set of social commerce metrics"). Therefore, the Examiner's finding in this regard have a rational basis that has not been persuasively rebutted.

Accordingly, we are not persuaded the Examiner erred in rejecting claim 1 under 35 U.S.C. § 102(e), or claims 2, 4–8, 10–14, and 16–18, which were not argued separately with particularity.

CONCLUSION

On this record, the Examiner did not err in rejecting claims 1, 2, 4–8, 10–14, and 16–18 under §§ 101 and 102(e).

DECISION

For the above reasons, we affirm the Examiner's decision to reject claims 1, 2, 4–8, 10–14, and 16–18.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED