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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte OLEG FIGLIN

Appeal 2017-001719¹
Application 13/659,159²
Technology Center 2600

Before BRADLEY W. BAUMEISTER, JOSEPH P. LENTIVECH, and
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1, 2, and 4–21. We have jurisdiction under 35 U.S.C. § 6(b)(1).

We AFFIRM.

¹ Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed March 18, 2016) and Reply Brief (“Reply Br.,” filed November 14, 2016), and the Examiner’s Answer (“Answer,” September 23, 2016) and Final Office Action (“Final Act.,” mailed December 11, 2015).

² Appellant identifies SAP SE as the real party in interest. Appeal Br. 2.

CLAIMED INVENTION

Appellant describes the claimed invention as “a conversation analysis system for solution scoping and positioning.” (Spec. ¶ 1).

Claims 1, 15, and 18 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system comprising:
 - a computer processor;
 - a computer memory device coupled to the computer processor; and
 - a computer display unit coupled to the computer processor;wherein the computer processor is configured to:
 - receive vocal input from one or more of a sales representative or a customer during a sales meeting;
 - extract one or more keywords from the vocal input;
 - generate a query using the one or more keywords;
 - search a database of products and services using the query; and
 - identify a product or service during the sales meeting as a function of the query and display the product or service on the computer display unit.

REJECTIONS

Claims 1, 2, and 4–21 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 2, 4–7, 9, 12, 13, 18 and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Eggen et al. (US 2008/0235018 A1, published Sept. 25, 2008) and Coleman et al. (WO 2009094482 A1, published July 30, 2009);

Claims 8, 10, and 19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Eggen, Coleman, and Barlow (Linda Barlow, *How to Use Web Search Engines*, THE SPIDER’S APPRENTICE) (hereinafter “Barlow”);

Claims 11 and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Eggen, Coleman, and Kennewick et al. (US 2009/0150156 A1, published June 11, 2009);

Claims 14–16 are rejected under 35 U.S.C. § 103(a) as unpatentable over Eggen, Coleman, and Douglas A. Reynolds & Richard C. Rose, *Robust Text-Independent Speaker Identification Using Gaussian Mixture Speaker Models*, 3 IEEE TRANSACTIONS ON SPEECH AND AUDIO PROCESSING 72–83 (1995) (hereinafter “Reynolds”); and

Claim 17 is rejected under 35 U.S.C. § 103(a) as unpatentable over Eggen, Coleman, Reynolds, and Barlow.

ANALYSIS

Patent-Ineligible Subject Matter

With respect to the rejection of claims under 35 U.S.C. § 101, Appellant argues claims 1, 2, and 4–20 as a group (App. Br. 8–17). We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *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.*, 566 U.S. 66 (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 Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., 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.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Mayo/Alice First Step

Evaluating the claims pursuant to the first step of the *Mayo/Alice* framework, the Examiner finds the claims to be “directed to the abstract idea of a method of organizing human activities, where a human is able to mentally perform each of the steps as noted in each of the independent claims to extract [a] keyword from voice input to search a database of products and services.” Final Act. 6.

Appellant argues that the claims “are more specifically directed to a system or tool” and recite a mobile device or similar systems and are thus not merely directed to the identified abstract idea. Appeal Br. 9–10.

However, our reviewing court has found that an abstract idea (such as “a method that can be performed by human thought alone”) is not rendered patent-eligible merely by coupling it to a machine or manufacture.

CyberSource Corp. v. Retail Decisions, Inc., 654 F.3d 1366, 1373–1377 (Fed. Cir. 2011). Additionally, as the court noted in *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607 (Fed. Cir. 2016), “not every claim that recites concrete, tangible components escapes the reach of the abstract-idea inquiry.” *Id.* at 611.

Appellant additionally argues that “the Examiner offers no definition of what is meant by ‘abstract’” and directs us to a dictionary definition of the term. Appeal Br. 10; Reply Br. 1. Appellant argues, alternatively, that the case law (specifically *Alice* and *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc)) provides a definition of “abstract” as relating to concepts such as risk hedging and intermediated settlement, and that the concept identified here is not an age-old concept such as these, but “are directed to novel, specific features that were unknown prior to Appellant’s invention.” Appeal Br. 10. Appellant argues that the determination of whether the claims are directed to an abstract idea is not supported by evidence. *Id.* at 10–11. Appellant contends that not all methods of organizing human activity and not all methods that could be performed in the human mind are patent-ineligible. *Id.* at 12–13. Appellant contends that “the driving concern of preemption” is simply not present in this case. *Id.* at 14; Reply Br. 2.

The Federal Circuit acknowledged in *Amdocs* that there is no single, succinct, useful definition of “abstract idea,” and the court suggested examining earlier cases of a similar or parallel nature and the way those cases were decided. *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“Instead of a definition [for what an ‘abstract idea’ encompasses], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”).

It is well-settled that collecting information is within the realm of abstract ideas – even when the information is limited to particular content. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). It is also well-settled that analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, are essentially mental processes within the abstract idea category. *Id.* at 1354. And merely presenting the results of abstract processes of collecting and analyzing information, without more, is abstract as an ancillary part of such collection and analysis. *Id.* Similar to the claims at issue in *Electric Power*, the claimed invention here gathers (“receive vocal input”), manipulates (“extract one or more keywords”), analyzes (“generate a query”; “search a database”), and presents information (“identify a product or service . . . and display the product or service”) of a specified content, but does not use any particular inventive technology for performing those functions.

As the Examiner concludes, *CyberSource* is apposite here – in these claims, what the computer processor is configured to perform can be performed entirely mentally or using pen and paper, the system of claim 1 amounts to an abstract idea. *CyberSource Corp. v. Retail Decisions, Inc.*,

654 F.3d 1366, 1372 (Fed. Cir. 2011) (cited in Ans. 3); *see also In re Comiskey*, 554 F.3d 967, 979 (Fed. Cir. 2009) (cited in Ans. 4.)

With respect to preemption, the Examiner specifically states that the rejection is not motivated by concerns regarding preemption. Final Act. 3. Furthermore, 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.*

Thus, we agree with the Examiner that the claims are directed to a patent-ineligible abstract idea.

Mayo/Alice Second Step

With respect to the second step of the *Mayo/Alice* framework, Appellant argues that the claims recite more than “simply conducting a sales call” but also “identifying potential products for a customer based on keywords identified in vocal input of the customer and sales representative.” Appeal Br. 15–16. However, this identification and use of a keyword were also included in the abstract idea found in the claim, as discussed above. Final Act. 6.

Appellant further argues that the claim contains elements other than generic computer structure implementing the abstract idea because the system functions in a new and improved manner or contains a previously unknown method. Appeal Br. 15–17. Putting aside the use of keywords, addressed immediately above, Appellant provides us with no example of what elements of the claimed system transforms the nature of the claim, and we see no elements that are more than generic computer structure implementing the abstract idea. Neither a finding of novelty nor a non-obviousness determination automatically leads to the conclusion that the claimed subject matter is patent-eligible. Although the second step of the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice Corp.*, 134 S. Ct. at 2355 (citation omitted).

Appellant’s patent-ineligibility arguments have been fully considered, but are not deemed persuasive, and, therefore, the rejection is sustained.

Obviousness

Claim 1

Appellant argues that Eggen teaches searching for information to supplement a conversation, but that such information is not product and services information, as in claim 1. Appeal Br. 17–18; Reply Br. 4. Appellant further argues that Coleman discloses searching for products and information on the basis of text messages and not from voice input. Appeal

Br. 18; Reply Br. 4. Therefore, Appellant argues, Coleman, “either alone or in combination with Eggen” does not teach or suggest the subject matter of claim 1. Appeal Br. 18; Reply Br. 4.

It is axiomatic that “[t]he test of obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art.” *In re Mouttet*, 686 F.3d 1322, 1333 (Fed. Cir. 2012) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). The Examiner finds that one of ordinary skill in the art at the time of the invention would have combined Coleman’s teaching of products and services information with Eggen’s teaching of supplemental content. Final Act. 8–9. Although Appellant states in a conclusory fashion that the combination of the teachings of Coleman and Eggen would not teach or suggest the subject matter of claim 1, Appellant’s discussion of the individual teachings of the two references does not illuminate any error in the Examiner’s findings and conclusions regarding the combination of the two references.

Appellant’s arguments relating to claim 1 have been fully considered but are not deemed persuasive and, therefore, the rejection is sustained.

Claims 4–14, 18–20

Claims 4–14 depend, directly or indirectly, from claim 1. Claim 18 is independent and bears relevant similarities to claim 1; claims 19 and 20 depend from claim 18. For these claims 4–14 and 18–20, no additional arguments have been made. We sustain the rejection of these claims.

Claim 2

Claim 2 further limits the system of claim 1, requiring that “the product or service comprises a software product or a software service; and

wherein the computer processor is configured to display on a display unit information relating to the identified software product or software service and a demonstration of the identified software product or software service.” Appeal Br. 22 (Claims App’x).

The Examiner finds that the combination of Eggen and Coleman teaches that goods or services including software being presented to a user Final Act. 9 (citing Coleman ¶¶ 37, 57; Eggen ¶ 18). Appellant argues that the combination does not teach or suggest “a demonstration of the identified software product or service,” because Coleman teaches only an audio feed. Appeal Br. 19. “A demo of a music piece is not a disclosure of a demonstration of a software product or service.” *Id.*

We disagree that the Examiner erred. First, as before, Appellant does not address “what the combined teachings of the references would have suggested to those having ordinary skill in the art.” *In re Mouttet*, 686 F.3d 1333. We agree with the Examiner that Coleman in combination with Eggen (teaching presentation of text, graphics, images, and videos) teaches or suggests the demonstration of software. *See* Final Action 9–10.

Appellant argues that a demonstration of music is not a demonstration of software, but Coleman teaches or suggests a demonstration of software via an audio feed, as Coleman both discloses that software is a product that might be sold and that the audio feed “preferably includes description or demo of the product or service.” Coleman ¶¶ 37, 57. We agree with the Examiner that the disputed limitation is taught or suggested by Coleman in combination with Eggen’s teachings, including the Eggen display device (Eggen ¶ 18, cited at Final Act. 9–10).

Appellant's arguments relating to claim 2 have been fully considered, but are not deemed persuasive, and, therefore, the rejection is sustained.

Claims 15–17

In Claim 15, Appellant claims:

15. A process comprising:
 - receiving into a mobile device vocal input from one or more persons;
 - extracting one or more keywords from the vocal input;
 - generating a query using the one or more keywords;
 - searching a database of products and services using the query; and
 - identifying a product or service as a function of the query;wherein the computer processor is configured to differentiate between the vocal input of different persons during a conversation, and *to search the database using keywords from the vocal input of only one of the persons in the conversation.*

Appeal Br. 24–25 (Claims App'x) (emphasis added).

The Examiner finds that the combination of Eggen, Coleman, and Reynolds teaches this, finding that the speaker identification of Reynolds teaches or suggests “differentiat[ion] between the vocal input of different persons.” Final Act. 19. The Examiner further adds that Eggen teaches capturing the conversation of “one or more of the participants” (quoting Eggen ¶ 22) and that this “reads on the option of capturing vocal input from only one of the participants.” Final Act. 5; Ans. 7.

Appellant argues that the Examiner has failed to show how the combination teaches or suggests “searching the database using keywords

from the vocal input of only one of the persons in the conversation.” Appeal Br. 19; Reply Br. 5.

We agree with Appellant. The ability to distinguish speakers (as in Reynolds) does not necessarily teach or suggest using only one speaker’s input for a search, and we do not agree that Eggen’s disclosure of capturing input of “one or more” person’s speech, combined with Reynold’s teachings, would have taught or suggested to one of ordinary skill that only one person’s speech input, from among any other persons in the conversation, is used.

Thus, we do not sustain this rejection.

We note that, although not specifically argued together, claims 16 and 17 depend from claim 15, and the rejections of these claims are based on the rejection of claim 15. Thus we do not sustain the rejections of claims 16 and 17.

Claim 21

Claim 21 further limits the system of claim 1, adding that “the computer processor is configured to generate a sales bid for the customer using the identified product or service.” Appeal Br. 25 (Claims App’x).

Appellant argues that Coleman “only relates to providing simple price and availability information” and such information “is not a disclosure of generating a sales bid, especially in the context of a sales meeting between a sales representative and a customer as recited elsewhere in the claim.”

Appeal Br. 20. We note that providing descriptions of products and services and other additional information is contemplated in the cited portions of Coleman. Coleman ¶ 5.

Claim terms are given their broadest reasonable interpretation consistent with the specification in which they appear. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). Appellant's Specification provides little detail to allow us to determine whether "simple price and availability information" (as Appellant characterizes the teachings of Coleman) could be "a sales bid" (as in the claim). The only use of the word "bid" in the Specification relates to a disclosure that the invention "can be used during an opportunity generation phase as well as during a more detailed bid process." Spec. ¶ 10; *see* Appeal Br. 5 (citing this paragraph of the Specification for claim 21). Although this bid process is described as detailed, we do not see an indication that a "sales bid," according to its broadest reasonable interpretation in this case, must be more narrowly drawn to information other than price and availability. Thus, we agree with the Examiner that Coleman's teaching teaches or suggests the "sales bid" of claim 21.

Appellant's arguments relating to claim 21 have been fully considered but are not deemed persuasive and, therefore, the rejection is sustained.

DECISION

The Examiner's rejection of claims 1, 2, and 4–21 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejections of claims 1, 2, 4–14, and 18–21 under 35 U.S.C. § 103(a) are affirmed.

The Examiner's rejections of claims 15–17 under 35 U.S.C. § 103(a) are reversed.

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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