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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte EUGENE S. EVANITSKY

_____

Appeal 2017-001811[1]
Application 12/976,028[2]
Technology Center 3600

_____

Before MICHAEL C. ASTORINO, TARA L. HUTCHINGS, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

HUTCHINGS, *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 1–12, 14–16, 18–20, and 22. We have jurisdiction under
35 U.S.C. § 6(b).

We REVERSE.

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[1] Our decision references Appellant's Appeal Brief ("App. Br.," filed
Dec. 28, 2015) and Reply Brief ("Reply Br.," filed Nov. 7, 2016), and the
Examiner's Answer ("Ans.," mailed Sept. 7, 2016) and Final Office Action
("Final Act.," mailed Apr. 23, 2015).
[2] Appellant identifies Xerox Corporation as the real party in interest. App.
Br. 1.

CLAIMED INVENTION

Appellant's claimed invention "relates generally to document processing," having "particular application in conjunction with identifying classified documents." Spec. ¶ 1.

Claims 1, 15, and 19 are the independent claims on appeal. Claim 15, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

> 15. A classified document system for maintaining a classified document labeling policy of an institution, said system comprising:
>
> [(a)] a classification engine that determines document types for one or more documents;
>
> [(b)] a rules engine that determines whether the documents comply with the classified document labeling policy of the institution using one or more rules, wherein the rules embody the classified document labeling policy of the institution in a computer interpretable form and are dependent upon document type; and
>
> [(c)] a controller that receives the documents and takes corrective measures for ones of the documents determined to be non-compliant;
>
> [(d)] wherein the corrective measures include:
>
> > [(1)] scanning an information technology (IT) infrastructure of the institution for copies of the ones of the documents determined to be non-compliant;
> >
> > [(2)] denying the sharing of one or more of the ones of the documents determined to be non-compliant;
> >
> > [(3)] stripping electronic messages including the one or more of the ones of the documents determined to be non-compliant before they are sent; and
> >
> > [(4)] adding a classified document symbol to print jobs of the one or more ones of the documents determined to be non-compliant.

REJECTIONS

Claims 1–12, 14–16, 18–20, and 22 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–12 and 18–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Schirripa (US 2006/0288015 A1, pub. Dec. 21, 2006) and Maes (US 2011/0197260 A1, pub. Aug. 11, 2011).[3]

Claims 14–16 and 22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Schirripa, Maes, and Goodman (US 2003/0009672 A1, pub. Jan. 9, 2003).

ANALYSIS

Patent-Ineligible Subject Matter

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 Servs. v. Prometheus Labs., 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

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[3] We treat the Examiner's identification of claims 14–16 and 22 among the claims subject to this rejection as inadvertent error (Final Act. 12), given their separate rejection (*see id.* at 32).

3

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)).

Here, in rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that the claims are directed to the abstract idea of "collecting, storing, organizing/correlating and transmitting information" and merely links the abstract idea to a technological, business environment. Final Act. 10; *see also id.* at 9–10 (the claimed steps "are based on a series of data collections (accumulation of coded relationships between computer resources), organizing and correlating data (confidence level, document compliance, corrective measures) and transmitting data," which are abstract ideas). The Examiner also determined that the claims do not include additional elements that are sufficient to amount to significantly more than

the judicial exception. *Id.* at 10–11 (claims do "no more than call on a 'computing device' with basic functionality for comparing stored and input data and mathematical algorithms/rules to perform generic computer funcitons that are well-understood, routine and conventional activities previously known to the industry").

The Specification describes that classified documents "are typically documents that include confidential and/or business sensitive data, whereby they are intended to have controlled access and distribution" and a "defined retention policy." Spec. ¶ 2. The Specification further describes that despite most large institutions having a defined process for labeling classified documents, the process is typically unwieldy, unfamiliar, and/or not understood, leading to errors in labeling and not labeling documents as classified. *Id.* The claimed invention is intended to address this issue by providing an improved classified document system for maintaining a classified document labiling policy of an instiution. For example, claim 15 recites a classified document system for maintaining a classified document labeling policy of an institution that includes a classification engine for determining document types for one or more documents; a rules engine that determines whether the documents comply with the classified document labeling policy, and a controller for taking corrective measures for documents determined to be non-compliant. The corrective measures include scanning an IT infrastructure for copies of documents determined to be non-compliant, denying the sharing of the documents determined to be non-compliant, stripping electronic messages including the one or more documents determined to be non-compliant, and adding a classified

document signal to print jobs of the documents determined to be non-compliant.

Here, we are persuaded that even if claim 15 is directed to an abstract idea of collecting, organizing, and transmitting data, the Examiner has not adequately explained why claim 15's controller fails to recite limitations that are "significantly more" than the abstract idea itself. In this regard, we agree with Appellant that "the Examiner does not address the various components and devices present in independent claim[] 15, e.g., 'classification engine', 'rules engine', 'controller.'" App. Br. 13. Instead, the Examiner concludes, without adequately explaining, that the claimed invention does not lie with the improvement of a technology because the claimed invention is directed to the abstract idea of collecting, organizing, and transmitting data and merely recites a "controller" at a high-level of generality for performing "well-understood, routine and conventional activities [that] amount to no more than implementing the abstract idea with a computerized system." Ans. 5. We are persuaded that such reasoning is inadequate to sustain the rejection.

The Examiner has not sufficiently established that claim 15 and its dependent claims are directed to patent-ineligible subject matter. Claims 1 and 19 recite language similar to claim 15 and are rejected applying the same analysis. Therefore, we do not sustain the Examiner's rejection of claims 1–12, 14–16, 18–20, and 22 under 35 U.S.C. § 101.

Obviousness

Independent Claims 1 and 19, and Dependent Claims 2–12, 18, and 20

We are persuaded by Appellant's argument that the Examiner erred in rejecting independent claims 1 and 19 under 35 U.S.C. § 103(a) at least

because Schirripa and Maes fail to disclose or suggest "determining whether the documents comply with the classified document labeling policy of the institution . . . , wherein the rules are dependent upon document type and are used to determine if a document contains sensitive data," as recited in claim 1, and similarly recited in claim 19. App. Br. 14–18; *see also* Reply Br. 8–10. In the Final Office Action, the Examiner acknowledges that Schirripa does not disclose the argued limitation, and relies on Maes to cure the deficiency. Final Act. 12–14 (citing Maes ¶¶ 5, 19, 32, 33, 46–48, Fig. 5), 29–30.

Maes discloses methods for enforcing policy-based advertisements. Maes ¶ 19. The policy enforcer intercepts service requests (e.g., a short message service (SMS) text request, voice telephone request, or video request) to check if usage policies have been satisfied. *Id.* The policy enforcer self monitors its health and integrity to determine if it has been compromised, such as whether its coding, associated policy files, and other files have been modified. *Id.* ¶ 32. If the policy enforcer has been compromised, then it prohibits access to the device. *Id.* If it has not been compromised, then a policy database is accessed and policies are retrieved. *Id.* ¶ 33. The method includes installing a policy enforcer program on a device. *Id.* ¶ 46, Fig. 5. The policy enforcer detects and reports any copying, distributing, and/or recording of software and/or files on the device. *Id.* ¶ 47, Fig. 5. The policy enforcer checks protection (if any) associated with the copied, distriputed or recorded software. *Id.* ¶ 48, Fig. 5. If a protection has been breached, then access to the device is blocked and service denied until corrective action is taken. *Id.* If no breach occurs, the policy enforcer continues to detect and report the activities of the device. *Id.*

As set forth above, Maes describes determining whether to allow access to files and/or software on a device based on stored policies. But the cited portions of Maes do not teach or suggest "determining whether the documents comply with the classified document labeling policy for the institution using one or more rules embodying the classified document labeling policy of the institution . . . , wherein the rules are dependent upon document type and are used to determine if a document contains sensitive data," as recited in claim 1. In particular, Maes' policy enforcement mechanism does not describe a classified document labeling policy, much less a classified labeling policy having rules that are dependent upon document type and used to determine if a document contains sensitive data.

In seeming contradiction to the findings set forth in the Final Action for rejecting claim 1 under 35 U.S.C. § 103, the Examiner finds in the Answer that Maes' policy enforcement mechanism "does not expressly disclose one or more rules dependent upon document type." Ans. 10–11. And the Examiner relies on Schirripa to cure the deficiency. *Id.* (citing Schirripa ¶¶ 2, 4, 7, 8, 10, 13, 14, 27, 29–32, 35–42, 74, 80). Yet, we find nothing in the Examiner's citations to Schirripa that discloses or suggests the argued limitation.

Schirripa relates to electronic content classification. Schirripa ¶ 1. Schirripa discloses a content classification system that analyzes a displayed document to determine whether, and to what extent, the document may be displayed on particular devices, such as a personal digital assistant and mobile telephone. *Id.* ¶ 26. The system extracts appropriate features or parameters describing the document and classifies the document for displayability. *Id.* ¶ 39. Classification rules are applied to extracted features

to create a score of the document being capable of being displayed on a particular device. *Id.* For example, the rules may specify the repeated existence of specific tags within the document that indicate that the document contains mobile content that can be displayed on a mobile device in general or specific brands or models of devices. *Id.* ¶ 74. A content classifier may track the number of features within the document and use heuristic rules to make a determination as to type of devices that may display the document content. *Id.* Schirripa, thus, describes determining whether a format of a document is displayable on a particular device, but we fail to see how, and the Examiner does not adequately explain how, Schirripa discloses or suggests "determining whether the documents comply with the classified document labeling policy of the institution . . . , wherein the rules are dependent upon document type and are used to determine if a document contains sensitive data," as recited in claim 1, and similarly recited in claim 19. For example, a document displayability determination, as described by Schirripa, does not relate to a compliance with a classified document labeling policy, nor does Schirripa suggest that the rules are used to determine if a document contains sensitive data.

In view of the foregoing, we do not sustain the Examiner's rejection of independent claims 1 and 19, and dependent claims 2–12, 18, and 20 under 35 U.S.C. § 103(a).

Independent Claim 15, and Dependent Claims 14, 16, and 22

Independent claim 15 includes language substantially similar to the language of claim 1, and stands rejected based on the same rationale applied with respect to claim 1. *See* Final Act. 34–36 (finding Schirripa does not disclose a rules engine that determines whether the documents comply with

the classified document labeling policy, and relying on Maes for teaching this limitation). Therefore, we do not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of independent claim 15, and dependent claims 14, 16, and 22 for the same reasons set forth above with respect to claim 1.

DECISION

The Examiner's rejection of claims 1–12, 14–16, 18–20, and 22 under 35 U.S.C. § 101 is reversed.

The Examiner's rejections of claims 1–12, 14–16, 18–20, and 22 under 35 U.S.C. § 103(a) are reversed.

REVERSED