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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES G. FARMER, CHARLES W. FARMER, and
JOSPEH W. FARMER

Appeal 2017-001899
Application 12/061,868¹
Technology Center 3600

Before, ANTON W. FETTING, JOSEPH A. FISCHETTI, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 2, 4, 8, 10, 17–20 and 23–33. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Appellants identify Trace Produce, LLC as the real party in interest. Appeal Br. 2.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants' claims relate to product information methods allowing a customer to access information related to an order of a commodity. Spec.

¶ 6.

Claim 1 reproduced below, is representative of the subject matter on appeal.

1. A product information method, comprising:

gathering informational items associated with a given product;

entering the informational items into a central database;

putting the informational items on a web page;

assigning and affixing at least one code to the given product;

associating the at least one code with the informational items on the web page, wherein data associated with the web page is stored within the central database;

providing a web-based application configured to provide at least one customer with access to the web page when the at least one code is entered or scanned into the web-based application;

determining a geographical location of the at least one customer by a computing device when the at least one customer accesses the web page; and

Appeal 2017-001899
Application 12/061,868

identifying the geographical location of the given product based at least in part on the determining the geographical location of the at least one customer.

THE REJECTIONS

The following rejections are before us for review.

Claims 1, 2, 4, 8, 10, 17–19, and 23–27 are rejected under 35 U.S.C. § 112 first paragraph.

Claims 1, 2, 4, 8, 10, 17–20, and 23–33 are rejected under 35 U.S.C. § 101.

ANALYSIS

35 U.S.C. § 112 FIRST PARAGRAPH REJECTION

We will not sustain the rejection of claims 1, 2, 4, 8, 10, 17–20, and 23–33 under 35 U.S.C. § 112 first paragraph.

The Examiner found that “the instant specification and drawings do not show that the inventors had possession of identifying the geographical location of the product based at least in part on the determining the geographical location of the at least one customer.” (Final Act. 3).

Appellants however argue,

T[he] produce includes a tracking ID that allows the produce’s location to be known when it’s [sic] tracking ID is entered into the central database. [Specification, [0104].] The tracking ID is located on the produce or its package. *Id.*, at [0061], [0062], [0102], [0104], [0120]. The consumer enters the tracking ID obtained from the produce or its package which is in the

consumer's possession. *Id.*, at [0061], [0104]. The user gets the tracking ID from the produce because the tracking ID is obtained from the produce itself or its package. *Id.* Thus, a user would enter the tracking ID into the central website while having the produce in his or her possession. Therefore, when the consumer's location is known, the location of the produce is also known. This is further supported by the fact that the advertising campaign is directed to benefit restaurants in the general geographical location of the customer/produce.

(Appeal Br. 10).

We agree with Appellants. We find that the Specification at paragraph 60 explicitly describes that marking information includes a tracking ID, and paragraph 62 explicitly describes that “the marking information is affixed directly to each piece of produce within an order (e.g., a sticker is affixed to each piece of fruit within an order).” Paragraph 104 explicitly describes, “[a]ccording to this exemplary embodiment, once the server (51, FIG. 7 or 80, FIG. 8) or other remote computing device receives and [sic] general geographic location of the end customer (18; FIG. 7 or FIG. 8), a geographically based targeted advertisement campaign, related to the tracked produce may be launched.” We thus find that those skilled in the art would understand that because customer and product locations are correlated, determining one will determine the other. Accordingly, we find that the Specification conveys with reasonable clarity to those skilled in the art that, as of the filing date, Appellants were in possession of the limitations of claims 1, 20, and 28 listed as lacking written description support on pages 2 and 3 of the final action.

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1, 2, 4, 8, 10, 17–20, and 23–33 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, we then ask, “[w]hat else is there in the claims before us?” . . . To answer that question, . . . consider the elements of each 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. . . . [The Court] described step two of this analysis as a search for an ““inventive concept””—*i.e.*, 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. Pty. Ltd. v. CLS Bank Int’l, 134 S. Ct. 2347, 2355 (2014) (internal citations omitted) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept.

Although the Court in *Alice* made a direct finding as to what the claims were directed to, we determine that this case’s claims themselves and

Appeal 2017-001899
Application 12/061,868

the Specification provide enough information to inform one as to what they are directed to.

The steps in claim 1 result in:

determining a geographical location of the at least one customer by a computing device when the at least one customer accesses the web page; and

identifying the geographical location of the given product based at least in part on the determining the geographical location of the at least one customer.

The Examiner determined that the claims are directed to “commodity tracing methods, which are considered to be expressions of an abstract idea.”

(Final Act. 4). The Specification states:

The ability to trace produce back to its packing facilities, inspection points, and even the field in which it was grown is becoming more of a necessity in the produce industry as concerns regarding food safety increase. In the event of a food-borne illness outbreak, for example, damage may be limited if the source of the contaminated product is identified quickly so that other products grown in the same field, processed in the same packing facility, and/or transported in the same vehicle can be quarantined.

Spec, ¶ 2.

The Specification also states:

In addition, many customers, such as brokers and retailers, are increasingly requesting real time access to information regarding the produce they buy. For example, they often desire to view shipping, tracing, and inspection information immediately after they place an order for produce. Many customers also require independent certification audits

of all produce sold in their stores.

Spec. ¶ 4.

Thus, all this evidence shows that claim 1 is directed to commodity tracing to geographically match an end user with a product in the general geographic area of each other. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972), in particular, that the claims at issue here are directed to an abstract idea. Commodity tracing to geographically match an end user with a product in the general geographic area of each other is a fundamental economic principle because it matches buyer and seller in the shortest route thereby reducing transportation costs. The patent-ineligible end of the 35 U.S.C. § 101 spectrum includes fundamental economic principles. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2357. Thus, calculating a maximum average global satisfaction value used to assign the seats of allocated seats to a group of customers is an “abstract idea” beyond the scope of § 101.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of an intermediated settlement in *Alice* and the concept of commodity tracing to geographically match an end user with a product in the general geographic area of each other, at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. That the claims do not preempt all forms of the abstraction or may be limited to

Appeal 2017-001899
Application 12/061,868

commodities, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–61 (Fed. Cir. 2015).

Claim 1, unlike the claims held non-abstract in prior cases, uses generic computer technology to perform data reception, transmission, and linkage and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (determining claims not abstract because they “focused on a specific asserted improvement in computer animation”).

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Appeal 2017-001899
Application 12/061,868

Alice Corp. Pty. Ltd., 134 S. Ct. at 2358 (alterations in original) (internal citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1354; *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am. Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018) (internal citation omitted).

Appeal 2017-001899
Application 12/061,868

Considered as an ordered combination, the computer components of Appellants' method add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-access/display is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (holding that the sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is, therefore, ordinary and conventional.

The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios. *See, e.g.*, Spec. ¶ 33. The Specification does not describe any particular improvement in the manner a computer functions, at least with respect to the claims in the instant application. Instead, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea of

Appeal 2017-001899
Application 12/061,868

information access and retrieval using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

We have reviewed all the arguments (Appeal Br. 14–27) Appellants have submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellants contrast its appealed claims with *Intellectual Ventures* arguing:

claim 1 does not teach customizing a website. Rather, claim 1 recites that a method involves assigning a code to a given product and that the code is associated with information in a website. The code is not part of a website customization, but is rather assigned to the product so that the user can gain access to the website. Thus, Applicant respectfully submits that there is no customization of the website as described in *Intellectual Ventures*.

(Appeal Br. 17).

We disagree with Appellants.

Intellectual Ventures argue[d] that the “interactive interface” is a specific application of the abstract idea that provides an inventive concept. But nowhere does Intellectual Ventures assert that it invented an interactive interface that manages web site content. Rather, the interactive interface limitation is a generic computer element.

Intellectual Ventures I LLC v. Capital One Bank (USA), N.A., 792 F.3d

Appeal 2017-001899
Application 12/061,868

1363, 1370 (2015).

Like the claims in *Intellectual Ventures*, as we determined supra, there is no evidence of anything more than generic computer elements being claimed, i.e., a central database, a web-based application and servers.

Appellants argue “*DDR Holdings* teaches that where the claims recite subject matter that solves a problem rooted in computer and/or internet technology that the claim is subject matter eligible. In this case, computer security is a problem rooted in computer and internet technology.” (Appeal Br. 19).

We disagree with Appellants. In light of the breadth of the claims, Appellants’ argument is not persuasive as to error in the rejection. In *DDR*, the claims at issue involved, inter alia, “web pages displays [with] at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants” (claim 1 of US 7,818,399 B1). There is no such claim element with this degree of detail addressing technology here before us. All that is required by the claims is generically recited computer technology, namely a web based application, a central database, and servers.

Appellants further argue, “determining the location of the product by determining the location of the user is not conventional or well understood, which is supported by the fact that after multiple searches performed by the Examiner that there is no prior art of record containing this claim element.” (Appeal Br. 19–20).

Appeal 2017-001899
Application 12/061,868

We disagree with Appellants.

That is, the Examiner addresses the claims as an ordered combination and determined there to be nothing “significantly more than the abstract idea itself” (as do we above) stating:

Moreover, when considering the elements and combinations of elements, the claims as a whole do not amount to significantly more than the abstract idea itself. This is because the claims do not amount to an improvement to another technology or technical field, or to the functioning of a computer itself; the claims do not move beyond a general link of the use of an abstract idea to a particular technological environment, and to the application of the abstract idea using a computer.

(Final Act. 4–5, *see also* Answer 16–19). *See Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1057 (Fed. Cir. 2017) (“Significantly, the claims do not provide details as to any non-conventional software for enhancing the financing process.”). *See also Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”).

We are further not persuaded by Appellants’ argument because the standard for patentability under 35 U.S.C. § 103(a) is obviousness, the standard for patentability under 35 U.S.C. § 102 is novelty, and the standard for patentability under 35 U.S.C. § 101 is subject matter eligibility. Each of these standards is separately required to be met before patentability can be

Appeal 2017-001899
Application 12/061,868

conferred on invention, which is not the case here based on the latter standard.

The question in step two of the *Alice* framework is not whether a claim element is novel, but whether the implementation of the abstract idea involves “more than the performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction and Transmission LLC v. Wells Fargo Bank, N. A.*, 776 F.3d 1343, 1347–48 (quoting *Alice*, 134 S. Ct. at 2359). Here, the Examiner made findings (Answer 16–19) of the well-understood, routine, conventional nature of the combination. The Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO’s 2015 UPDATE OF THE INTERIM GUIDANCE ON PATENT SUBJECT MATTER ELIGIBILITY. *See id.* at 16–17. Accordingly, we find no error with the Examiner’s prima facie case that the claimed implementation does not rise to more than the performance of well-understood, routine, conventional activities previously known to the industry.

Appellants also argue, “[c]laim 20 deals with a method of tracking products, so the claim is clearly not directed towards a law of nature or a natural phenomenon. In this case, the Final Office Action alleges that claim 20 is directed towards the abstract idea of commodity tracing methods.” (Appeal Br. 21).

We disagree with Appellants because as determined supra, tracking or tracing an item or person, and/or assigning codes thereto are abstractions and

Appeal 2017-001899
Application 12/061,868

not patent eligible. See *Elec. Power Grp., LLC*, 830 F.3d at 1354.

CONCLUSIONS OF LAW

We conclude the Examiner did err in rejecting claims 1, 2, 4, 8, 10, 17–19, and 23–27 under 35 U.S.C. § 112 first paragraph.

We conclude the Examiner did not err in rejecting claims 1, 2, 4, 8, 10, 17–20, and 23–33 under 35 U.S.C. § 101.

DECISION

The decision of the Examiner to reject claims 1, 2, 4, 8, 10, 17–20, and 23–33 is affirmed.

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. § 1.136(a)(1)(iv).

AFFIRMED