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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte Y. HONG CHOU, TOM FARMAKIS, and
THOMAS R. KNOWLES

Appeal 2017-001923
Application 12/540,031¹
Technology Center 3600

Before JENNIFER S. BISK, LARRY J. HUME, and SCOTT B. HOWARD,
Administrative Patent Judges.

BISK, *Administrative Patent Judge.*

DECISION ON APPEAL²

Appellants, listed above, seek our review under 35 U.S.C. § 134(a) of the Examiner’s rejection of claims 1–43. We have jurisdiction under 25 U.S.C. § 6(b). We affirm

¹ Appellants identify the real party in interest as DAL Global Services, LLC. App. Br. 4.

² Throughout this Decision we have considered the Specification filed August 12, 2009 (“Spec.”), the Final Rejection mailed November 2, 2015 (“Final Act.”), the Appeal Brief filed March 24, 2016 (“App. Br.”), the Examiner’s Answer mailed September 23, 2016 (“Ans.”), and the Reply Brief filed November 21, 2016 (“Reply Br.”).

STATEMENT OF THE CASE

Appellants' invention relates "to real-time travel service management and dispatch systems." Spec. ¶ 1. For example, coordinating services for aircraft between flights. *Id.* ¶ 2.

Claim 36 is illustrative:

36. A computer program product, comprising a non-transitory computer usable medium including a computer readable program code adapted to be executed to implement a method for providing management and dispatching aircraft services, said method comprising:

controlling data flow and processing, employing a controller processor, of management and dispatch operations;

storing organizing retrieving, and distributing management and dispatch data using a database server;

accessing dispatch functions and management functions employing a workstation;

receiving and transmitting dispatch information over a local wireless communication network using a wireless handheld device;

receiving an availability alert from a service crew member and transmitting a current status based on the availability alert from the service crew member; and,

analyzing incoming GPS information from the handheld device and comparing the GPS information against an exact location to validate GPS information by a location validation module;

wherein real-time information is transmitted between the controller processor, the work station, and the handheld device.

THE REJECTIONS

1. The Examiner rejected claims 1–43 under U.S.C. § 101 as directed to ineligible subject matter. Final Act. 15–18.

2. The Examiner rejected claims 1–7, 9–36, and 40³ under § 103(a) as being obvious over Emond (US 2007/0049292 A1; Mar. 1, 2007) and Baiada (US 6,721,714 B1; Apr. 13, 2004). Final Act. 18–30.

3. The Examiner rejected claims 37–39 and 41–43 under § 103(a) as being obvious over Emond, Baiada, and Chou (US 2005/0197848 A1; Sept. 8, 2005). Final Act. 30–33.

ANALYSIS

THE § 101 REJECTION

We have reviewed the Examiner’s rejection in light of Appellants’ contentions and the evidence of record. For the following reasons, we sustain the Examiner’s rejection.

For purposes of the § 101 rejection, Appellants argue all the claims as a group, focusing on the limitations of claims 1, 25, 36, and 40 only. *See* Appeal Br. 12–20. We select claim 36 as representative. Claims 1–35 and 37–43 stand or fall with claim 36. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Legal Framework

To determine whether claims are patent eligible under § 101, we apply the Supreme Court’s two-step test articulated in *Alice Corp. Proprietary Ltd.*

³ For purposes of the § 103 rejections, claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Final Act. 2.

v. CLS Bank International, 134 S. Ct. 2347 (2014). First, we determine whether the claims are directed to a patent-ineligible concept: laws of nature, natural phenomena, and abstract ideas. *Id.* at 2354–55. If so, we then proceed to the second step and examine the claim’s elements—both individually and as an ordered combination—to determine whether the claim contains an “inventive concept” sufficient to transform the claimed abstract idea into a patent-eligible application. *Id.* at 2357.

The Federal Circuit has described the *Alice* step-one inquiry as looking at the “focus” of the claims, their “character as a whole,” and the *Alice* step-two inquiry as looking more precisely at what the claim elements add—whether they identify an “inventive concept” in the application of the ineligible matter to which the claim is directed. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Alice Step One

The Examiner concludes that the claimed invention is directed to an abstract idea, “specifically the abstract idea of ‘an idea of itself’ involving service management and dispatch.” Final Act. 13, 15–16. The Examiner compares the claims to those at issue in *Cyberfone*, stating that the claims simply organize and compare data, which can be performed mentally. *Id.* at 16 (citing *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988 (Fed. Cir. 2016)); Ans. 13.

Appellants contend that “the claims are not directed to “an idea of itself” because they “cannot be mentally or manually executed” at least for the reason that they involve a GPS enabled handheld device. App.

Br. 13–14; Reply Br. 4–5. Appellants also contend the claims are necessarily rooted in computer technology “to overcome a problem specifically arising in real-time management and dispatch systems and methods” and require “a database server” and “real-time information transmission” between devices. App. Br. 16–17 (citing Spec. ¶¶ 23, 28); Reply Br. 5.

We agree with the Examiner (Final Act. 2) that claims 1–43 are all directed to an abstract idea in the field of service management and dispatch. Specifically, the claims are directed to managing and dispatching services by receiving, analyzing, and transmitting data on location and availability of service crew. Our reviewing court has found similar methods to be abstract ideas. In particular, we find the claims similar to those found to be directed to an abstract idea in *Electric Power*, which did “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.” *Elec. Power*, 830 F.3d at 1351. “[W]e have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Elec. Power*, 830 F.3d at 1353 (citations omitted); see also *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC.*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017) (concluding claims directed to the functional results of accumulating, converting, and monitoring records manipulate data “but fail[] to do so in a non-abstract way”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n.*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (concluding the “claims generally recite .

. . . extracting data . . . [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”).

For purposes of this step in the *Alice* analysis, the claimed GPS enabled handheld device, similar to the scanner in *Content Extraction* and the telephone unit and server in *TLI Communications*, merely provide a generic environment in which to carry out the abstract idea. *Content Extraction*, 776 F.3d at 1347; *In re TLI Commc’ns LLD Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016). Similarly, the claims do not purport to improve the functionality of either a database server or the transmission of data between devices. Instead, the benefits of the claims flow from performing the abstract idea in conjunction with well-known database structure and functionality and in using the generic features provided by computer devices and networks to transmit information. *See BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1288 (Fed. Cir. 2018) (holding unpatentable claims directed to indexing information stored in databases and explaining that the claimed benefits of the claims “are not to improvement to database functionality,” but instead “flow from performing an abstract idea in conjunction with a well-known database structure”).

Alice Step Two

Because the claims are directed to an abstract idea, we proceed to step two to determine whether the claims include additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 134 S. Ct. at 2357. For example, we look at whether the claims focus on a specific means or method that improves the relevant technology or instead are directed to a result or

effect that, itself, is the abstract idea and merely invoke generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

The Examiner concludes the claimed elements, either individually or as an ordered combination, do not add significantly more to the abstract idea such that the claimed invention is rendered patent-eligible. Final Act. 16–17. The Examiner adds that “the location validation limitation is at most a computer implemented algorithm for comparing one GPS set of categorized data against an exact location set of categorized data” and “is modified by using generic processing devices and memory media that provides receiving and transmission and validation which is nothing more than a purely conventional computerized implementation of Applicant[s]’ algorithm.” Ans. 4–5.

Appellants argue the claims recite additional elements that amount to significantly more than the identified abstract idea. App. Br. 17–20; Reply Br. 6–8. According to Appellants, “the location validation module . . . is neither a routine nor a well-known system and function, as it solves important problems facing airline dispatch and management systems.” App. Br. 17. Appellants add “[t]he use of a GPS device to interact with service crew members for availability alerts and current status are not routine and conventional functions.” *Id.* at 18.

We agree with the Examiner that “the claimed solution is directed to service and dispatch management which stands outside the realm of computer technology.” Ans. 3. We do not find Appellants’ reliance on *Enfish* persuasive. *See* Reply Br. 6–8 (citing *Enfish*, 822 F.3d at 1327). *Enfish*’s claims were directed to “an innovative logical model for a computer database” which provide a “self-referential table.” *Enfish*, 822 F.3d at 1330.

We find Appellants' claims are more similar to those in *Electric Power* than those in *Enfish*. The claims in *Electric Power* were directed to “detecting events on an interconnected electric power grid in real time over a wide area and automatically analyzing the events on the interconnected electric power grid.” *Elec. Power*, 830 F.3d at 1351. Although the *Electric Power* claims received and analyzed data from various devices, including “EMS/SCADA systems,” the Federal Circuit determined that, unlike *Enfish*, “the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Id.* at 1354. Like the claims in *Electric Power*, the claims here receive and analyze data from GPS enabled handheld devices. They do not “require a new source or type of information, or new techniques for analyzing it” or “require an arguably inventive set of components or methods, such as measurement devices or techniques, that would generate new data.” *Id.* at 1355. Instead of invoking “any assertedly inventive programming,” the claims here “[m]erely require[e] the selection and manipulation of information” to make certain services more efficient. *Id.* As in *Electric Power*, this manipulation of data “by itself does not transform the otherwise-abstract processes of information collection and analysis.” *Id.*

Moreover, notwithstanding Appellants' contention that the claimed invention “solves important problems facing airline dispatch and management systems” and “when taken as an ordered combination, provide unconventional steps that confine the abstract idea to a *particular useful application*” (App. Br. 17–18), the analysis of *Alice*'s step two is not an evaluation of novelty or nonobviousness, 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*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Lab.*, 132 S. Ct. 1289, 1294 (2012)). The question in the second step is not whether the claimed invention is novel, but rather whether the implementation of the abstract idea involves “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content*, 776 F.3d at 1347–48 (quoting *Alice*, 134 S. Ct. at 2359).

Consequently, even if we were to agree with Appellants that the claim recites a particularly novel and useful method for airline dispatch and management, never before implemented on computers, the Examiner determines, and Appellants do not persuasively refute, that the computer implementation of the claimed methodology requires only computer equipment and functions that are well-understood, routine, and conventional, such as storing, receiving, processing, and displaying data. Final Act. 16–17; Ans. 3–5; see, e.g., *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (“Rather, the claims recite both a generic computer element—a processor—and a series of generic computer ‘components’ that merely restate their individual functions—i.e., organizing, mapping, identifying, defining, detecting, and modifying.”); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (quoting *Alice*, 134 S. Ct. at 2357) (“Instead, the claimed sequence of steps comprises only ‘conventional steps, specified at a high level of generality,’ which is insufficient to supply an ‘inventive concept.’”); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352, 1355 (Fed. Cir. 2014) (finding computer-

implemented system for guaranteeing performance of an online transaction to be ineligible).

That the Specification emphasizes integrating available systems and using standard equipment to implement the claimed invention only bolsters the notion that the claimed invention does not focus on an improvement in computer technology itself, but rather focuses on an abstract idea that is implemented using standard computer equipment and functionality as tools. *See, e.g.*, Spec. ¶ 57 (“As is known to those skilled in the art, the aforementioned example architectures described above, according to the present invention, can be implemented in many ways, such as program instructions for execution by a processor, as software modules, microcode, as computer program product on computer readable media, as logic circuits, as application specific integrated circuits, as firmware, etc.”), ¶ 59 (“[W]ell-known equivalent components and elements may be substituted in place of those described herein, and similarly, well-known equivalent techniques may be substituted in place of the particular techniques disclosed.”). The claims do not, for example, purport to improve the functioning of the GPS enabled handheld devices, the method with a database server performs data management, or the process of transmitting or receiving data. Nor do they effect an improvement in any other technology or technical field. “At best, the claims describe the automation of the [abstract idea] through the use of generic-computer functions.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015). That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

We do not find Appellants’ reliance on *Bascom* persuasive. Reply Br. 7 (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*,

827 F.3d 1341 (Fed. Cir. 2016)). In *BASCOM*, the claims were generally directed to filtering content. 827 F.3d at 1348. Although the Court determined the claims recited generic computer, network, and Internet components that were not inventive by themselves, the Court found the ordered combination of the limitations provided the requisite inventive concept. *Id.* at 1349-1350 (“[A]n inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces”). There, the patent extensively claimed and explained how a particular arrangement of elements was “a technical improvement over prior art ways of filtering such content.” *Id.* at 1350 (“According to *BASCOM*, the inventive concept harnesses this technical feature of network technology in a filtering system by associating individual accounts with their own filtering scheme and elements while locating the filtering system on an ISP server.”). Here, other than providing general conclusory statements, Appellants do not persuasively explain how the claims are similar to those in *BASCOM*.

Lastly, we find unavailing Appellants’ contention that the claims are patentable because they do “not pre-empt all service management and dispatch, but only a particular, practical application of service management and dispatch.” Reply Br. 7. Where, as here, the claims cover a patent-ineligible concept, preemption concerns “are fully addressed and made moot” by an analysis under the *Alice* framework. *See Ariosa*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). The Examiner’s point in this regard is well taken. *See* Ans. 13.

Conclusion

For the foregoing reasons, then, the recited elements—considered both individually and as an ordered combination—do not contain an

“inventive concept” sufficient to transform the claimed abstract idea into a patent-eligible application. Therefore, we are not persuaded that the Examiner erred in rejecting independent claims 1, 25, 36, and 40.

We also sustain the Examiner’s ineligibility rejection of dependent claims 2–24, 26–35, 37–39, and 41–43. *See* Final Act. 15–17. Appellants’ contention that the dependent claims are eligible for the same reasons that the independent claims are eligible (*see* Appeal Br. 12–20) is unavailing for the reasons previously discussed. The dependent claims call for similar generic components, devices, and functions as the independent claims. Appellant has not argued that the additional limitations added by these claims require any non-conventional components, devices, or functions.

Therefore, we are not persuaded that the Examiner erred in rejecting claims 1–43 under § 101.

THE § 103 REJECTIONS

Claims 1–7, 9–36, and 40

Appellants direct their arguments to the limitations of independent claims 1, 25, 36, and 40. *See* App. Br. 20–22; Reply Br. 8–10.

*“database server” and “workstation”*⁴

Appellants argue that Emond does not teach or suggest the claimed database server or workstation. Appeal Br. 21; Reply Br. 8–9. In response, the Examiner explains that Emond’s LBS system comprises various components, including “client and base system databases, and client and base system workstations configured to access the database servers for

⁴ Claim 40 recites a database server, but does not recite a workstation.

ultimately distributing management and dispatch data.” Ans. 6–7 (citing Emond (54), Figs. 3, 7, ¶¶ 38, 39, 66).

We agree with the Examiner (Ans. 6–7) that a person of ordinary skill would understand at least Emond’s LBS platform discloses the claimed workstation. Emond ¶ 39 (“The LBS platform 104 comprehensively refers to, and includes, an application server 127 that provides the location based services to the mobile clients 102.”). We also agree with the Examiner (Ans. 6–7) that at least Emond’s data storage means 160 discloses the claimed database server. Emond Fig. 7, ¶ 66 (“The LBS platform 104 may also comprise data storage means 160.”).

*“location validation module” for “comparing the
GPS information against an exact location”*

Appellants argue Emond does not teach the claimed location validation module. Appeal Br. 22–23; Reply Br. 9. According to Appellants, Emond uses A-GPS technology with a fixed GPS receiver to “more accurately obtain GPS location data,” and “[w]hile the fixed GPS receiver of Emond may be disposed at a fixed location that may be known, the GPS location determination of this fixed GPS receiver may be subject to error and, thus, does not provide an ‘exact location’ as claimed.” App. Br. 22. In response, the Examiner explains that Emond’s “fixed GPS receiver provides the exact location information to validate the mobile GPS data.” Ans. 7 (citing Emond ¶¶ 10, 38, 72).

We agree with the Examiner (Ans. 7) that the broadest reasonable interpretation of the claimed “exact location” includes the location of a fixed GPS receiver as disclosed by Emond. When describing one embodiment of the invention, the Specification uses the term “exact location” to refer to the

position of a gate location. Spec. ¶ 45 (“[T]he Position Validation utility compares the GPS position against the exact location of the assigned gate.”). Appellants do not point to anything in the Specification, however, limiting how that position is defined or excluding the use of a fixed GPS receiver for determining that position.

*“receiving an availability alert from a service crew member”*⁵

Appellants argue Baiada does not teach or suggest “receiving an availability alert from a service crew member.” App. Br. 23; Reply Br. 9. According to Appellants, instead of disclosing *receiving* an alert, Baiada “clearly involves communications to the support personnel.” App. Br. 23. In response, the Examiner explains that “Baiada illustrates that labor resources” are “among the various types of data for transmitting a current status based on availability considerations” and that Baiada “teaches availability alerts [and] real-time information transmission.” Ans. 7–8 (citing Baiada, 13:64–67, 17:40–46).

We agree with the Examiner (Ans. 7–8) that a person of ordinary skill in the art would understand that Baiada’s emphasis on labor resources and real-time transmission of current status suggests receiving availability alerts from a crew member. Baiada, 13:64–67, 17:40–46. Further, such artisan would find it obvious to incorporate this suggestion into Emond’s system.

Secondary Considerations

Appellants submit two 37 C.F.R. § 1.132 declarations that purport to show “commercial success of the resulting product derived from the claimed

⁵ Claim 40 recites a similar limitation, “receiving an availability alert from the dispatched service crew member.”

invention.” App. Br. 24–26; Reply Br. 10. Appellants assert that “there should be no question that what was sold was within the scope of the claims.” App. Br. 24. Appellants, however, do not explain this assertion or point to evidence supporting this conclusion.

In addition, the Examiner explains that neither declaration sets forth facts that are supported by evidence, but instead include bare opinion “not relevant to the issue of nonobviousness of the claimed subject matter.” Ans. 8–9. Y. Hong Chou’s opinion, for example, simply affirms that the claimed subject matter functions as intended, which is irrelevant to obviousness. *Id.* at 8. Tom Farmakis’s declaration opines that “it is unlikely” that DAL Global Services would have achieved \$117 million in sales without the described services. *Id.* at 8–9. Not only is the \$117 million in sales not given any context, such as what percentage of the market this dollar amount represents, this testimony does not directly link those sales to the invention.⁶

⁶ While a prima facie case for obviousness may be rebutted by evidence showing secondary considerations such as commercial success as alleged by Appellants, such arguments must be supported by evidence on the record which demonstrates a nexus between the purported commercial success and the claimed invention. *See Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1574 (Fed. Cir. 1996) (noting that fact finders must ascertain whether a nexus connects commercial success to a claimed invention and determine the probative value of secondary-considerations evidence for rebutting a prima facie case of obviousness); *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1391–94 (Fed. Cir. 1988) (noting that secondary-considerations evidence must be considered despite a strong case for obviousness based on prior art, and laying out an “evidentiary routine” where a patentee must establish a prima facie case of a nexus between commercial success and the claimed invention); *Simmons Fastener Corp. v. Ill. Tool Works, Inc.*, 739 F.2d 1573, 1575 (Fed. Cir. 1984) (explaining that the weight accorded to secondary-considerations evidence depends on a demonstration of “[a] nexus between the merits of the

We, therefore, agree with the Examiner (Ans. 8–9) that Appellants’ declarations do not show commercial success attributable to the claimed subject matter and, therefore, do not outweigh the strong evidence of obviousness discussed above.

Conclusion

For these reasons, we are not persuaded of any error in the Examiner’s rejection of independent claims 1, 25, 36, and 40. Appellants do not argue claims 2–7, 9–24, and 25–35 separately with particularity. Appeal Br. 20–27; Reply Br. 8–10. Thus, for the same reasons as discussed with respect to independent claims 1, 25, 36, and 40, Appellants’ arguments are not persuasive of any error in the Examiner’s determination.

Claims 37–39 and 41–43

We also sustain the Examiner’s obviousness rejection, based on the combination of Emond, Baiada, and Chou, of dependent claims 37–39 and 41–43. Final Act. 30–33.

Appellants argue Chou does not teach or suggest “wherein the exact location comprises an exact location of an assigned gate” as recited by claims 37–39. App. Br. 26–27; Reply Br. 10. According to Appellants, Chou instead discloses “providing a location of an agent, for example, as ‘close to gate 10’ instead of the typical GPS longitude and latitude coordinates.” App. Br. 26. In response, the Examiner explains that “Chou teaches a real-time expression of location information including specific gate

claimed invention and the evidence of secondary considerations”). However, we further note evidence of commercial success without proof that sales are the direct result of unique characteristics of the invention does not demonstrate nonobviousness. *In re DBC*, 545 F.3d 1373, 1384 (Fed. Cir. 2008).

location that may be displayed on at least a handheld device.” Ans. 9–10 (citing Chou ¶¶ 28, 46). We agree with the Examiner. Chou ¶ 28 (“[P]ositions of agents and customers are expressed in meaningful location terms, such as a specific gate.”); ¶ 46 (“The assignment of any deal to one or more agents takes into consideration the current location of the active agents . . . [t]he location may include terminal, gate, facility, walkway, as well as any location that can be displayed on a map layout.”).

Appellants do not argue claims 41–43 separately with particularity. App. Br. 26–27; Reply Br. 10. Thus, for the same reasons as discussed with respect to independent claims 1, 25, 36, and 40, Appellants’ arguments are not persuasive of any error in the Examiner’s determination.

DECISION

We affirm the Examiner’s decision to reject claims 1–43.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED