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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RACHEL MOORE, SCOTT BROOKS,
and NATALIE AZAM

Appeal 2017-001947
Application 13/467,742¹
Technology Center 3600

Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1 and 21–39, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellants, the real party in interest is III Holdings 1, LLC. App. Br. 2.

² Our Decision refers to Appellants' Appeal Brief filed May 9, 2016 ("App. Br."); Appellants' Reply Brief filed November 17, 2016 ("Reply Br."); Examiner's Answer mailed September 28, 2016 ("Ans."); and Final Office Action mailed November 12, 2015 ("Final Act.").

STATEMENT OF THE CASE

Claims on Appeal

Claims 1, 29, and 34 are independent claims. Claim 1 is reproduced below:

1. A method performed at a server-side computer executing software code, comprising:

providing data for displaying a plurality of data entry fields at a computerized interface for a user, wherein the data entry fields, as displayed on the computerized interface, comprise portions of a graphical interface;

receiving via the plurality of data entry fields of the graphical interface, a response from the user to psychographic characteristic questioning, wherein the psychographic characteristic questioning comprises an attitudinal scan, a motivational scan provided to the user in response to the attitudinal scan, and a behavioral scan provided to the user in response to the motivational scan, wherein first, second, and third groups of data entry fields of the plurality of data entry fields respectively correspond to the attitudinal scan, the motivational scan, and the behavioral scan, wherein the second group of data entry fields are determined by the server-side computer based on content provided by the user via the first group of data entry fields, and wherein the third group of data entry fields are determined by the server-side computer based on content provided by the user via the second group of data entry fields;

determining, by the server-side computer, a psychographic profile of the user based on results of the motivational scan, results of the attitudinal scan, and results of the behavioral scan; and

causing transmission, by the server-side computer, of a particular graphical user interface page for display on the computerized interface for the user, wherein the particular graphical user interface page includes a comparison of financial transaction accounts to be presented to the user, wherein the financial transaction accounts are selected by the server-side

computer for the comparison based on the determined psychographic profile, and wherein the particular graphical user interface page includes content that links to a web-based application configured to facilitate online completion of an application for one or more of the financial transaction accounts presented in the comparison.

Examiner's Rejection

Claims 1 and 21–39 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3–5.

Our review in this appeal is limited only to the above rejection and the issues raised by Appellants. Arguments not made are waived. *See* MPEP § 1205.02; 37 C.F.R. §§ 41.37(c)(1)(iv) and 41.39(a)(1).

ANALYSIS

The Examiner concluded claims 1 and 21–39 are directed to patent-ineligible subject matter. Final Act. 4–5. We agree with the Examiner. Appellants argue the claims as a group. *See* App. Br. 11. We select independent claim 1 as representative of Appellants' arguments for claims 21–39. 37 C.F.R. § 41.37(c)(1)(iv).

In *Alice*, the Supreme Court set forth an analytical “framework 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. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If so, the second step is to consider the elements of the claims “individually

and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to “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.’” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

First Step

Turning to the first step of the *Alice* analysis, we agree with the Examiner that the claims are directed to the patent-ineligible concept of “[r]ecommending a financial transaction account and facilitating completion of an application for said account,” which “is a fundamental economic practice.” Final Act. 5; Ans. 4. Indeed, the Specification teaches the invention is directed to “enabling an issuer of a financial transaction instrument to provide a consumer, after a customer profiling process resulting in a recommended or selected card is complete, with a comparison of a competitor’s card(s) deemed to be most similar to the recommended or custom card(s).” Spec. ¶ 13; *see* Spec. ¶ 30.

We disagree with Appellants that the Examiner “oversimplifies and describes the claim at an impermissibly high level of abstraction.” Reply Br. 3. Claim 1 recites, in pertinent part,

causing transmission, by the server-side computer, of a particular graphical user interface page for display on the computerized interface for the user, wherein the particular graphical user interface page includes a comparison of financial transaction

accounts to be presented to the user, wherein the financial transaction accounts are selected by the server-side computer for the comparison based on the determined psychographic profile, and wherein the particular graphical user interface page includes content that links to a web-based application configured to facilitate online completion of an application for one or more of the financial transaction accounts presented in the comparison.

Aside from the computer-implemented limitations of providing and receiving data via a graphical interface, the claim recites little more than “a comparison of financial transaction accounts to be presented to the user, wherein the financial transaction accounts are selected . . . based on the determined psychographic profile” and “facilitat[ing] . . . completion of an application for one or more of the financial transaction accounts presented in the comparison.” The claim, therefore, recites that financial transaction accounts, e.g., credit cards, are recommended based on a psychographic profile and that a link based on the psychographic profile is displayed through which the user may apply for a financial transaction account. Further, even considering the claimed operations that create the psychographic profile that the recommendation is based on, the claims remain directed to an abstract idea. The claimed psychographic profile is created by “psychographic characteristic questioning compris[ing] an attitudinal scan, a motivational scan . . . and a behavioral scan.” Those “scans” are a series of questions the user answers to determine a user’s preferences. Spec. ¶¶ 46–47, ¶ 67 (“an attitudinal scan, is performed . . . the consumer is asked one or more questions designed to ascertain how the consumer spends his or her free time”), ¶ 68 (“a motivational scan . . . in which the consumer is asked one or more questions . . . to ascertain why the consumer is motivated to spend his or free time in the manner indicated”),

¶ 69 (“a behavioral scan . . . in which the consumer is asked one or more questions . . . to ascertain more specifically what the needs, habits, tastes, or preferences of the consumer are”). Our reviewing court has determined claims that facilitate the processing of an application for a financial transaction account are directed to an abstract idea. *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1056 (Fed. Cir. 2017) (citing *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (“data processing to facilitate financing is a patent-ineligible abstract concept”). Therefore, recommending a financial transaction account, even when those recommendations are based on a consumer’s responses to preference questions, and facilitating the application process for that account remain an abstract idea.

Second Step

Turning to the second step of the *Alice* analysis, we agree with the Examiner that the claim fails to transform the abstract idea into a patent-eligible invention. Final Act. 4–5. The Specification teaches “it can . . . be difficult or tedious, or even overwhelming, for consumers to sift through a broad array of often complex options in order to find a card that best suits them” and so “there is a need for an improved customer profiling process that can make it simpler for consumers to select the card most suited to their personal preferences and relevant traits.” Spec. ¶ 11. The Specification further teaches that “[u]seful machines for performing some or all of the operations of the present invention,” i.e., the abstract idea of recommending financial transaction accounts based on user preferences, “include general-purpose digital computers or similar devices.” *Id.* ¶ 76. As such, the

Specification teaches the abstract idea described in the Specification and recited by the claim is implemented using generic computing technology. Using a generic computer to implement “an otherwise abstract manual process is precisely the sort of invention that the *Alice* Court deemed ineligible for patenting.” *Credit Acceptance*, 859 F.3d at 1056 (citing *Alice*, 134 S. Ct. at 2357–59).

Appellants’ arguments that the Examiner “does not establish that the particular operations performed by a computer in claim 1 are routine or conventional” and that “the Examiner has not provided any supporting evidence for asserting that all claimed elements are ‘well-understood routine, conventional activities’” (App. Br. 11–12) do not persuade us the claim recites significantly more than the abstract idea itself. “Significantly, the claims do not provide details as to any non-conventional software” or computing functions “for enhancing the financi[al] process.” *Credit Acceptance*, 859 F.3d at 1057 (citation omitted). Even though the Examiner has not asserted “art-based rejections” (App. Br. 13), the claimed functions performed by the computer recited in the claim are the routine computing functions of data gathering, analyzing, sending, and presenting, e.g., “receiving . . . a response from the user,” “data entry fields are determined . . . based on content provided by the user,” “a particular graphical user interface page for display,” “online completion of an application.” As discussed *supra*, Appellants’ Specification teaches the operations recited in the claim are performed by routine and conventional “general-purpose digital computers.” Spec. ¶ 76. Accordingly, “[n]othing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology

for gathering, sending, and presenting the desired information.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016).

We also are not persuaded by Appellants’ argument that claim 1 recites “various features that, taken as an ‘ordered combination,’ constitute a particular, practical application of any underlying abstract idea and, as such, claim 1 amounts to significantly more than” the abstract idea itself. Reply Br. 3; *see* App. Br. 14–15. Even when viewing the limitations of the claim both individually and as an ordered combination, the recited operations do not transform the abstract idea into patent-eligible subject matter. The features Appellants highlight (*see* Reply Br. 4–5) describe the abstract idea and its automation through the use of generic computing functions, which is insufficient to transform the abstract idea into patent-eligible subject matter. *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (citations omitted).

Further, Appellants’ argument that claim 1 recites patent-eligible subject matter because “the present claims do not pose a significant risk of unduly preempting” the abstract concept (Reply Br. 6–7; App. Br. 15–16) does not persuade us the claim recites patent-eligible subject matter. Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Where claims are deemed to recite only patent-ineligible subject matter under the two-step Alice analysis, as they are here, “preemption concerns are fully addressed and made moot.” *Id.*

Additionally, Appellants have not proffered sufficient evidence or argument to persuade us that any of the limitations in the dependent claims

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provide a meaningful limitation that transforms the claims into patent-eligible subject matter. *See* App. Br. 9–16; *see also* Reply Br. 2–7.

Accordingly, Appellants have not persuaded us claims 1 and 21–39 are directed to patent-eligible subject matter. Therefore, we sustain the rejection of claims 1 and 21–39 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

DECISION

We affirm the Examiner’s decision rejecting claims 1 and 21–39 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

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