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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AYMAN OMAR FARAHAT and
NESREEN KAMEL ABUSEREE AHMED¹

Appeal 2017-002132
Application 13/678,149
Technology Center 3600

Before BRADLEY W. BAUMEISTER, JASON V. MORGAN, and
NABEEL U. KHAN, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1–5, 7–14, 16, 17, and 19–23. Claims 6, 15, and 18 are canceled. Amend. 4, 7, and 9 (Oct. 12, 2015). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellant is the applicant, Adobe Systems Incorporated, which the Appeal Brief identifies as the real party in interest. App. Br. 3.

Invention

The inventors disclose a predictive tool that uses correlations with unmeasured factors influencing marketing activities to predict the probability of a particular entity result. Abstract.

Representative Claim

1. In a digital marketing environment, a method implemented by a computing device to improve assessments regarding whether a type of marketing activity will be successful, the method comprising:

determining, based at least in part on data collected over a time period, a first set of measurable factors with which decisions to implement the type of marketing activity are correlated, and a second set of measurable factors with which a category of entity results is correlated;

generating, using at least in part the first and second sets of measurable factors, a model configured to determine decisions to implement the type of marketing activity, as inputs to the model, are correlated with the category of entity results, as outputs from the model, the model including a first error term influencing the category of entity results and a second error term influencing decisions on implementing the type of marketing activity, the first and second error terms corresponding to unmeasured factors that cannot be measured concretely;

determining a covariance correlation between the first and second error terms within the model;

responsive to the covariance correlation being statistically significant, predicting, using the model, a probability of the category of entity results for the type of marketing activity;

responsive to the covariance correlation being statistically insignificant, determining that the model is not able to predict the probability of the category of entity results for the particular entity; and

outputting the probability when the covariance correlation is statistically significant to cause implementation of the type of marketing activity when the probability is above a threshold.

Rejection

The Examiner rejects claims 1–5, 7–14, 16, 17, and 19–23 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Non-Final Act. 5–7.

FINDINGS AND CONTENTIONS

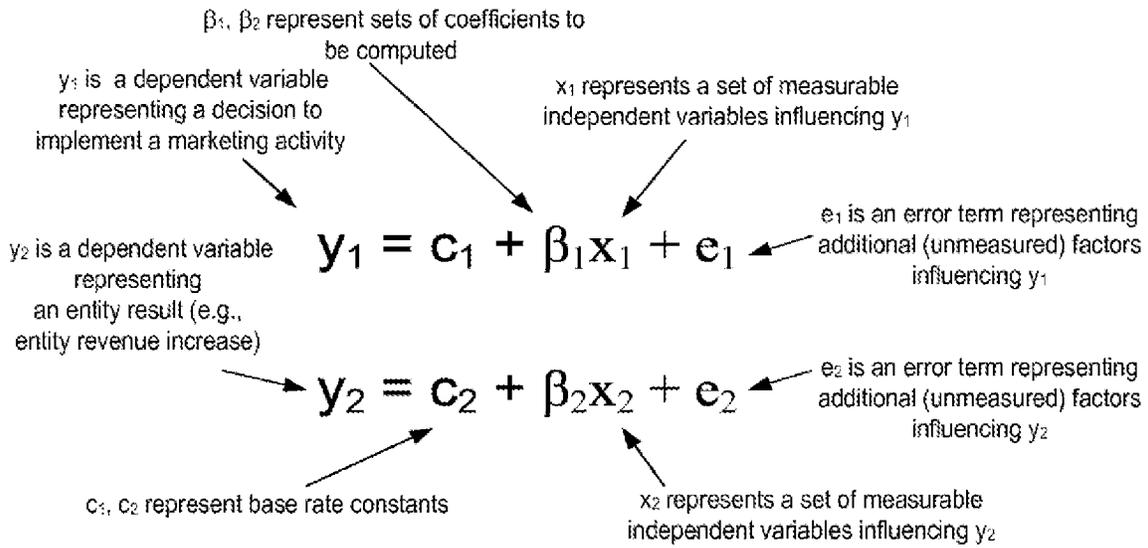
In rejecting claim 1 under 35 U.S.C. § 101, the Examiner concludes the claim is “directed to the abstract [idea] of generating a marketing model to determine how marketing activity decisions are correlated with results.” Non-Final Act. 5; *see also* Ans. 3–6. The Examiner further concludes claim 1 does “not include additional elements or a combination of elements that amount to *significantly more* than the” underlying abstract idea. Non-Final Act. 6; *see also* Ans. 9.

Appellant contends the Examiner erred because “[r]ather than being generically directed to ‘generating a marketing model’ in a manner that would preempt others’ use, claim 1 recites features that specify with particularity the manner in which error terms are employed for analysis of marketing activities.” App. Br. 15. Appellant further argues claim 1 amounts to significantly more than the purported abstract idea because “the types of unmeasurable factor correlations contemplated by claim 1 are assessed using computing technology and simply cannot be implemented in a practical manner otherwise due to the immense amount of data used” and because “the claimed solution solves a problem related to how to efficiently and cost effectively deliver digital marketing offers to consumers using computing technology.” *Id.* at 17–18.

ANALYSIS

We agree with and adopt as our own the Examiner's findings of facts and conclusions as set forth in the Answer and in the Action from which this appeal was taken. We have considered Appellant's arguments, but do not find them persuasive of error. We provide the following explanation for emphasis.

Claim 1 includes recitations directed to using data collected over a period of time to generate a model configured to determine decisions to implement a type of marketing activity. The generated model uses: (1) measurable factor inputs, such as discount or coupon offers, correlated with decisions to implement a type of marketing activity and (2) measurable factors, such as growth in entity sales or revenues, correlated with a category of entity results. *See Spec.* ¶ 11. Unmeasured factors that cannot be measured concretely are represented as first and second error terms. *See id.* If the covariance correlation between the first and second error terms is statistically significant, then the model is used to predict and output the probability that the category of entity results for the type of marketing activity. *See id.* ¶¶ 13, 35. An example of the model—or more precisely, a template for the model given that values such as coefficients β_1 , β_2 have not been entered or computed—is illustrated by the two equations shown in Figure 5 of the Specification, which is reproduced below:



The Specification's Figure 5 "illustrates an example set of equations in which entity results and decisions to perform marketing activities are represented as dependent variables" y_1 and y_2 . Spec. ¶ 8. First and second measureable factors are represented by independent variables x_1 and x_2 . Unmeasured factors are represented by error terms e_1 and e_2 .

We agree with the Examiner that claim 1 is "directed to the abstract of generating a marketing model to determine how marketing activity decisions are correlated with results." Non-Final Act. 5; *see also* Ans. 3. Appellant argues:

the improvements of the "model including a first error term influencing the category of entity results and a second error term influencing decisions on implementing the type of marketing activity," as recited in claim 1, are analogous to improvements made in *Enfish* via "a data storage and retrieval system for a computer memory, comprising: means for configuring said memory according to a logical table."

App. Br. 17. However, we do not agree the recitations of claim 1 are analogous to the patent-eligible improvements of *Enfish*, which focused "on an improvement to computer functionality itself, not on economic or other

tasks for which a computer is used in its ordinary capacity.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). Here, the advance purportedly made is merely “a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016).

We also agree with the Examiner that claim 1 does not include additional elements or a combination of additional elements that amount to significantly more than the underlying abstract idea. Ans. 6–7. Appellant argues “the claimed solution is rooted in computer technology to overcome a problem of assisting users in determining digital marketing activity success based on factors the users would be unable to calculate manually on their own.” App. Br. 18; *see also* Reply Br. 12–13. However, the problem overcome by the claimed invention—making accurate predictions regarding the impact of marketing decisions—is not one that specifically arises in the realm of digital marketing. Instead, it is a business problem that predates digital marketing environments. *Cf. DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257–58 (Fed. Cir. 2014) (the problem overcome by the claimed invention did “not arise in the ‘brick and mortar’ context,” but was “a problem specifically arising the realm of computer networks”). Moreover, as the Examiner correctly finds, “while . . . it would be less convenient to generate the model and perform the calculations manually if a large volume of data was utilized (although this is not required by Appellant’s claims), inconvenience of performing many calculations does not equate to impossibility.” Ans. 8. “[T]he fact that the required

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calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”

Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.), 687 F.3d 1266, 1278 (Fed. Cir. 2012).

For these reasons, we agree with the Examiner that claim 1 encompasses non-statutory subject matter. Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 1, and claims 2–5, 7–14, 16, 17, and 19–23, which Appellant argues are patentable for similar reasons. App. Br. 22–39.

DECISION

We affirm the Examiner’s decision rejecting claims 1–5, 7–14, 16, 17, and 19–23.

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