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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/191,412	08/14/2008	Alan Murray	MED6-001/01US 318298-2001	1770
58249	7590	07/03/2018	EXAMINER	
COOLEY LLP ATTN: IP Docketing Department 1299 Pennsylvania Avenue, NW Suite 700 Washington, DC 20004			MUNSON, PATRICIA H	
			ART UNIT	PAPER NUMBER
			3622	
			NOTIFICATION DATE	DELIVERY MODE
			07/03/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALAN MURRAY, JOSHUA ABRAM, RODNEY HOOK, and
BALAJI DEVARAJAN

Appeal 2017-002287
Application 12/191,412¹
Technology Center 3600

Before ALLEN R MACDONALD, JEREMY J. CURCURI, and
IRVIN E. BRANCH, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–5, 8–11, 13, 14, 16, and 19–29, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Technology

The application relates to “targeting online advertisements using data derived from social networks.” Spec. Abstract.

¹ According to Appellants, the real party in interest is dstillery, Inc. App. Br. 3.

Illustrative Claim

Claim 1 is illustrative and reproduced below:

1. A method comprising:

receiving visitation data associated with a first user visiting a webpage that includes social networking content associated with a social network of a second user, the visitation data including a unique identifier associated with the second user;

receiving visitation data associated with a third user visiting the webpage including the unique identifier;

constructing a micronetwork associating the first user with the third user by determining that the first user and the third user have each visited the webpage based on (1) the visitation data associated with the first user visiting the webpage including the unique identifier and (2) the visitation data associated with the third user visiting the webpage including the unique identifier, the micronetwork constructed such that at least a portion of the social network of the second user is reconstructed without collecting private information related to the first user or the third user;

selecting advertisements for transmission to the micronetwork; and

transmitting at least one selected advertisement to the micronetwork.

Rejections²

Claims 1–5, 8–11, 13, 14, 16, and 19–29 stand rejected under 35 U.S.C. § 101 as being directed to a judicial exception (i.e. a law of nature, a

² Rather than repeat the Examiner’s positions and Appellants’ arguments in their entirety, we refer to the above-mentioned Appeal Brief, as well as the following documents for their respective details: the Final Action mailed May 26, 2015 (“Final Act.”) and the Examiner’s Answer mailed September 23, 2016 (“Ans.”).

natural phenomenon, or an abstract idea) without significantly more. Final Act. 2–3.

Claims 1–5, 8–11, 13, 14, 16, and 19–29 stand rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre- AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor regards as the invention. Final Act. 3–4.

Claims 1–4, 8–11, 13, 14, and 19–23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Beyda (US 2005/0166233 A1; published July 28, 2005) and Kublickis (US 2007/0067297 A1; published Mar. 22, 2007)). Final Act. 4–18.

Claims 5, 16, and 24–29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Beyda, Kublickis, and Rohan (US 2008/0162260 A1; published July 3, 2008). Final Act. 18–30.

ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Because Appellants do not present arguments with respect to the rejections under 35 U.S.C. §§ 112 and 103, we summarily affirm those rejections. *See, generally*, App. Br.; *see* Reply Br. 2 (“Appellant will address the other rejections, as appropriate, once the Patent Trials and Appeals Board has rendered a decision on the patent eligibility of claims 1, 23, and 24.”).

The 35 U.S.C. § 101 Rejection

Section 101 defines patent-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has “long held that this provision contains an important implicit exception[:]
Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012)).

To distinguish “patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts,” the Supreme Court has set up an analytical framework. *Alice Corp.Pty. v. CLS Bank Int’l*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo*, 566 U.S. at 71–73). In the first step of the analysis, we determine whether the claims at issue are “directed to” a judicial exception, such as an abstract idea. *Alice*, 134 S. Ct. at 2355. If not, the inquiry ends. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claims are determined to be directed to an abstract idea, then we consider under step two whether the claims contain an “inventive concept” sufficient to “transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S.Ct. at 2355 (citation omitted).

Noting that the two stages involve “overlapping scrutiny of the content of the claims,” the Federal Circuit has described “the first-stage inquiry” as “looking at the ‘focus’ of the claims, their ‘character as a whole,’” and “the second-stage inquiry (where reached)” as “looking more

precisely at what the claim elements add—specifically, whether, in the Supreme Court’s terms, they identify an ‘inventive concept’ in the application of the ineligible matter to which (by assumption at stage two) the claim is directed.” *Electric Power Grp, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). In considering whether a claim is directed to an abstract idea, we acknowledge, as did the Court 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. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that in itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

Step One: Whether the Claims Are Directed to a Patent-Ineligible Concept (Abstract Idea)

Claim 1, which is representative of the claims before us, is directed to sending advertisements to users based on the web sites they visit.

The Examiner concludes that the claims are directed to the fundamental economic practice of targeted advertising, an abstract idea, which is a judicial exception to patent eligibility. Final Act. 2–3; Ans. 3–4. The Examiner likens the claims to comparing new and stored information and using rules to identify options, noting that such claims have been found patent ineligible. Ans. 3 (citing *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 Fed. Appx. 950 (Fed. Cir. 2014) (nonprecedential)).

We agree with and adopt the Examiner’s conclusion that the claims are directed to an abstract idea.

Appellants argue that “claims that ‘address a business challenge . . . that is particular to the Internet’ are not considered to be directed to a judicial exception if they ‘differ from other claims found by the courts to recite abstract ideas’ particularly if they do not ‘merely recite the performance of some business practice known from the pre-Internet world along with a requirement to perform it on the Internet’.” Reply Br. 1 (quoting App. Br. 8). On the record before us, we conclude that the claims in the present application are similar to those found patent ineligible in *SmartGene*, reaching the same conclusion as the Examiner. Appellants do not otherwise persuasively rebut the Examiner’s conclusion.

Accordingly, we agree with the Examiner at step one of the *Alice* analysis.

Step Two: Whether Additional Elements Transform The Abstract Idea Into Patent-Eligible Subject Matter

The Examiner also finds the claims do not include limitations that are “significantly more” than the abstract idea because “the claims do not include an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.” Final Act. 3; *see* Ans. 3–4.

We adopt the Examiner’s conclusion that the claims do not transform the abstract idea into patent-eligible application.

Appellants argue that the claims are not like those in *Alice* because the claims here relate to “constructing a micronetwork without private information of users,” which is not “well-understood, routine, or conventional.” App. Br. 11. Appellants also argue “the claims are rooted in

a particular technological environment and address a challenge that is particular to that technological environment.” Reply Br. 2 (also arguing that the claims are similar to those found patent-eligible in *DDR Holdings, LLC v. Hotel.s.com*, 773 F.3d 1245 (Fed. Cir. 2014). We disagree. Appellants state:

As used herein, a “micronetwork” (sometimes referred to herein as a “micro-affinity group”) generally includes a subset of users who, through their behavior as evidenced on social networking websites, are more likely to share interests and consumer preferences. For example, a micronetwork may include members with a user’s social network that share a particular interest.

Spec. ¶ 28. Therefore, we conclude that a micronetwork is a human interest group (a method of organizing human activity) to which Appellants apply a computer network to use its well-understood, routine, or conventional communication functions.

Appellants’ arguments are not persuasive because, even if the construction of a micronetwork roots the claims in networking technology (i.e., “constructing a micronetwork”), improving how advertising is targeted within networks does not improve the technology of networking.

Accordingly, for the foregoing reasons, we are not persuaded the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter, or in rejecting on the same basis independent claims 23 and 24, as well as dependent claims 2–5, 8–11, 13, 14, 16, 19–22, and 25–29, which Appellants do not argue separately. App. Br. 6–14.

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DECISION

For the reasons above, we affirm the Examiner's decision rejecting claims 1–5, 8–11, 13, 14, 16, and 19–29.

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