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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YAMING ZHOU

Appeal 2017-002665
Application 13/258,348¹
Technology Center 3600

Before ELENI MANTIS MERCADER, MATTHEW J. McNEILL, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 3, 6, 8, 11–14, 16, and 19–21, which are all the claims pending in this application. Claims 2, 4, 5, 7, 9, 10, 15, 17, 18, and 22 were cancelled. App. Br. 39–44. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellant, the real party in interest is Alibaba Group Holding Limited. App. Br. 3.

STATEMENT OF THE CASE

Introduction

Appellant's application relates to determining the credibility of an online trading user by querying other users that have interacted with the trading user. Abstract. Claim 1 illustrates the appealed subject matter and reads as follows:

1. A method implemented by one or more computing devices, the method comprising:

identifying a candidate user of a website as a user to be evaluated in response to determining that a base score associated with the candidate user is greater than a base score threshold;

intercepting a time segment as a referenced transaction record from a historical transaction record of the user to be evaluated through a time window, the historical transaction record being stored in a database;

querying reference users corresponding to the user to be evaluated from the referenced transaction record, the reference users including trading users who have conducted online transactions with the user to be evaluated within the time segment;

determining that the user to be evaluated is suspicious of credit speculation in response to determining that a percentage of the reference users whose base scores are less than a predetermined score is greater than or equal to a predetermined percentage; and

upon determining that the user to be evaluated is suspicious of the credit speculation, determining that the user to be evaluated is an unreliable user in response to determining that a majority of sales transactions with the user to be evaluated acting as a seller involve transaction amounts less than a predetermined monetary amount.

The Examiner's Rejection

Claims 1, 3, 6, 8, 11–14, 16, and 19–21 stand rejected under 35 U.S.C. § 101 as being directed to unpatentable subject matter. Non-Final Act. 3–7.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's contentions that the Examiner has erred. We disagree with Appellant's contentions. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the Non-Final Action from which this appeal is taken; and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief. We concur with the Examiner's conclusions. We highlight the following additional points.

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 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.” *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. Assuming that a claim nominally falls within one of the statutory categories

of machine, manufacture, process, or composition of matter, the first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. If the claim is directed to a judicial exception, such as an abstract idea, the second step is to determine whether additional elements in the claim “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* at 2355 (quoting *Mayo*, 566 U.S. at 78). This second step is described as “a search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is ‘. . . significantly more than . . . the [ineligible concept] itself.’” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Alice Step One

“[T]he first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). “The abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1854)). “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 itself is

the abstract idea and merely invoke generic processes and machinery.”
McRO, 837 F.3d at 1314.

Appellant argues claim 1 is not directed to an abstract idea because it recites features that are unique to a technological environment. App. Br. 15. According to Appellant, it would be impossible for a human to perform the method of claim 1 without the assistance of a computer. Reply Br. 5.

Claim 1 is generally directed to generating a credibility result for a user by evaluating the user’s transaction history, including the credibility of other users with whom the primary user has interacted. The Examiner finds, and we agree, claim 1 is directed to the abstract idea of generating a credibility result for a user, and this method involves a series of mental steps that could be performed with or without the assistance of a computer. Non-Final Act. 4–5.

Appellant argues claim 1 cannot be performed without the assistance of a computer. App. Br. 16. According to Appellant, pencil and paper could not produce the actual effect of the invention. *Id.* at 15–16. Instead, Appellant argues claim 1 is “necessarily rooted in technology and cannot be performed by people without the assistance of a computer.” *Id.* at 16.

Appellant has not persuaded us of Examiner error. Claim 1 recites a “method implemented by one or more computing devices.” The method is directed to identifying a user to be evaluated, intercepting a transaction record, querying reference users that have interacted with the user to be evaluated, determining that the user is suspicious of credit speculation based on the query results, and determining that the user is suspicious of credit speculation based on the user’s transaction history.

We disagree with Appellant’s characterization of this method as “necessarily rooted in technology.” Claim 1 recites a business method for identifying users suspicious of credit speculation. The computer limitations in claim 1 are merely tools to achieve this method. Indeed, Appellant concedes that without the assistance of a computer, a person could evaluate a paper copy of the historical transaction record of a user. *See* App. Br. 15. Appellant further concedes a user could search through piles of papers, determine reference users, and correspond with these reference users. *Id.* The Federal Circuit in *DDR Holdings* found claims necessarily rooted in computer technology to be patent eligible, but issued a relevant warning:

We caution, however, that not all claims purporting to address Internet-centric challenges are eligible for patent. For example, in our recently-decided *Ultramercial* opinion, the patentee argued that its claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” But this alone could not render its claims patent-eligible. In particular, we found the claims to merely recite the abstract idea of “offering media content in exchange for viewing an advertisement,” along with “routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.”

DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245, 1258 (Fed. Cir. 2014) (citations omitted).

The claims in *DDR Holdings* addressed a problem unique to the Internet in a manner that was “not merely the routine or conventional use of the Internet.” *Id.* at 1259. In particular, rather than the expected behavior of simply sending the website visitor to a third-party website, the claimed invention behaved in a manner different than expected by sending a website

visitor to a hybrid web page presenting information from a third-party with the look and feel of the host website. *Id.* at 1258–59. In contrast, Appellant has not identified any unconventional behavior by the recited computer limitations in claim 1. Instead, claim 1 recites using conventional computer techniques such as retrieving data from a database, comparing data, and making determinations based on these comparisons. The nature of claim 1 as a whole is not to define a specific technological improvement, but to recite the steps necessary to perform the abstract idea itself. Claim 1 employs “generic processes and machinery” to achieve results, and is not focused on “a specific means or method that improves the relevant technology.” *McRO*, 837 F.3d at 1314.

Accordingly, we find claim 1 does not contain the specificity necessary to show how the processors’ operations differ from prior human methods, and is therefore not directed to a technological improvement, but the abstract idea itself. *See McRO*, 837 F.3d at 1314 (“The computer here is employed to perform a distinct process to automate a task previously performed by humans. . . . This is unlike *Flook*, *Bilski*, and *Alice*, where the claimed computer-automated process and the prior method were carried out in the same way.”).

However, we note that “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen — what prior cases were about, and which way they were decided.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)). Here, a survey of other cases supports our finding that claim 1 is directed to an abstract idea. That is, claim 1 is analogous to other

cases where the Federal Circuit has found claims relating to computer-implemented business methods to be directed to abstract ideas, for example, *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1374 (Fed. Cir. 2017) (“purchasing goods at a local point-of-sale system from a remote seller”), *Credit Acceptance Corp. v. Westlake Services*, 859 F.3d 1044 (Fed. Cir. 2017) (providing financing packages to a customer for products in a dealer’s inventory based on customer financial information transmitted to a server via a communication network), *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (automatic optimization of product pricing based on potential customer responses to offers), and *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014) (performing a transaction performance guaranty service for online commercial transactions).

Similarly, our reviewing court has concluded that abstract ideas include the concepts of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power*, 830 F.3d at 1353. Similarly, “collecting, displaying, and manipulating data” is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017). Also, the gathering and combining of data that does not require input from a physical device is an abstract idea. *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014). Our reviewing court has also concluded that “creating an index and using that index to search for

and retrieve data” is an abstract idea. *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017).

For these reasons, Appellant has not persuaded us the Examiner erred in finding claim 1 is directed to an abstract idea.

Alice Step Two

The second step in the *Alice* analysis requires a search for an “inventive concept” that “must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). There must be more than “computer functions [that] are ‘well-understood, routine, conventional activit[ies]’ previously known to the industry.” *Alice*, 134 S. Ct. at 2359 (second alteration in original) (quoting *Mayo*, 566 U.S. at 73).

Appellant argues the claimed invention provides significantly more than an abstract idea because claim 1 recites “a challenge that is particular to and inherent in the Internet.” App. Br. 21. According to Appellant, although the claim recites a business challenge, this challenge is particular to the Internet, which transforms the claim into something significantly more than the abstract idea itself. *Id.* at 21–22 (citing *DDR Holdings*, 773 F.3d 1245).

Appellant has not persuaded us of Examiner error. As discussed above, claim 1 is generally directed to generating a credibility result for a user by evaluating the user’s transaction history, and in particular the credibility of other users with which the primary user has interacted. Appellant argues the claims are akin to the claims in *DDR Holdings* that were necessarily rooted in computer technology. *See* App. Br. 21–22. We

disagree. In *DDR Holdings*, the Federal Circuit found claims drawn to “generating a composite web page that combines certain visual elements of a ‘host’ website with content of a third-party merchant” provided a solution “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” 773 F.3d at 1248, 1257. In contrast, claim 1 solves a problem of identifying users suspicious of credit speculation and determining that the users are unreliable. That is, claim 1 addresses a business challenge that was previously addressed using a manual process; it does not embody a solution to a computer-based problem. Thus, as noted above, claim 1 is akin to the type of claim the Federal Circuit admonished against in *DDR Holdings*. 773 F.3d at 1257 (differentiating the claims at issue from claims that “merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet”).

Moreover, our reviewing court has made it clear that merely making the practice of an abstract idea more effective by implementing the idea on a computer does not suffice to meet the inventive concept requirement of *Alice*. See *OIP Techs.*, 788 F.3d at 1363 (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”).

Preemption

Finally, we note that preemption is the concern that drives the exclusionary principle of judicial exceptions to patent-eligible subject matter. *Alice*, 134 S. Ct. at 2354. However, preemption is not a separate test of patent eligibility, but is inherently addressed within the *Alice* framework. See *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed.

Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”). Accordingly, Appellant’s argument that claim 1 does not completely preempt “identifying a candidate user of a website as a user to be evaluated, determining that the user to be evaluated is suspicious of credit speculation, and determining that the user to be evaluated is an unreliable user” (App. Br. 19), is not, by itself, persuasive of patent eligibility.

For these reasons, we are not persuaded the Examiner erred in rejecting claim 1 as patent ineligible. Although Appellant nominally addresses independent claims 6 and 14 separately, Appellant provides no new arguments for these claims. *See* App. Br. 22–36. Thus, we are also not persuaded the Examiner erred in rejecting claims 6 and 14 as patent ineligible. We, therefore, sustain the rejection of independent claims 1, 6, and 14. We also sustain the rejection of dependent claims 3, 8, 11–13, 16, and 19–21, for which Appellant provides no separate argument. *See* App. Br. 36.

DECISION

We affirm the decision of the Examiner rejecting claims 1, 3, 6, 8, 11–14, 16, and 19–21.

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