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EXAMINER

KHATTAR, RAJESH

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN BOSWELL, GOVIND NARAYAN,
DAHREN GRADY, SHAWN PARKS,
OSCAR TENGIO, and TROY THOMPSON

Appeal 2017-002799
Application 10/028,284¹
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–45. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to the Appellants, “[t]he real party in interest of the present application is Genworth Holdings, Inc. and its parents and subsidiary companies.” Appeal Br. 1.

ILLUSTRATIVE CLAIM

1. A computer implemented method that analyzes a financial services product pricing process using a waterfall tool that graphically represents a plurality of predetermined price metrics and drill down metrics to manage revenue leaks and enhance price performance, the computer implemented method comprising:

receiving, via an electronic input, data from a plurality of sources in a computer system;

generating, via the waterfall tool comprising a computer processor, a waterfall that electronically displays revenues cascading down to a pocket price to illustrate revenue leaks, the step of generating the waterfall including the steps of:

measuring, using the computer processor, predetermined pricing metrics using the received data,

determining, using the computer processor, a present value of the predetermined pricing metrics, and

graphing, using the computer processor, the present value of each of the predetermined pricing metrics;

calculating, using the computer processor based on the generated waterfall, a differential between the present value of the predetermined pricing metrics, at least a plurality of differentials being determined,

identifying, using the computer processor, each of the plurality of differentials as representing a respective revenue leak, each of the plurality of differentials associated with at least one price structure element,

comparing, using the computer processor, each of the plurality of differentials to the at least one known price structure element,

determining, using the computer processor, that a corresponding trigger is attained based on the comparing, and

electronically outputting, using an interactive display, the results of the comparing and further outputting a plurality of buckets illustrating one or more revenue leaks, and

the step of measuring the predetermined pricing metrics includes measuring at least one selected from the group comprising a plurality of incentives, a plurality of commissions, a plurality of fees, an underwriting gap and a market gap.

REJECTION

Claims 1–45 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Issues of subject-matter eligibility are analyzed according to the framework delineated by the Supreme Court in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014) — first, determining whether the claim is directed to judicially excepted subject matter (such as a so-called “abstract idea”) and, if so, second, determining whether there are any “additional elements” recited in the claim that (either individually or as an “ordered combination”) amount to “significantly more” than the identified judicially excepted subject matter.

In this case, initially, Final Office Action (page 3) states that the claims are directed to the abstract idea of “the organization and comparison of data.” However, the Examiner’s Answer makes a substantial refinement to the abstract idea definition, stating:

Examiner notes that the claims 1–45 are directed to the abstract idea of ***analyzing a financial services product pricing process using a waterfall tool that graphically represents a***

plurality of predetermined price metrics and drill down metrics to manage revenue leaks and enhance price performance. The concept claimed in these claims is simply viewed as organization and comparison of data and displaying results of comparison showing revenue leaks which can be performed mentally and is an idea of itself.

Answer 2–3 (emphasis added). Further, under the second part of the *Alice* framework, the Examiner states that the claims lack any elements — whether regarded individually, or as an ordered combination thereof — that would constitute “significantly more” than this refined description of the identified abstract idea. *See id.* at 3–4. Accordingly, we will address only the Appellants’ arguments directed to the determinations made by the Examiner in the Examiner’s Answer.

With regard to the first *Alice* step, the Appellants do not dispute the propriety of the Examiner’s refined definition of the abstract idea. *See* Reply Br. 2–5. Instead, the Appellants focus entirely on the second *Alice* step, arguing: “Contrary to the Examiner’s assertion, the claims ***do*** include additional elements that are sufficient to amount to significantly more than the judicial exception.” *Id.* at 2. “In the present case,” according to the Appellants, “the ***ordered combination*** of the claim elements results in ***significantly more*** than an abstract idea.” *Id.* at 3. “For instance,” the Appellants contend,

independent claim 24 is directed to “waterfall tool compris[ing] a computer processor coupled to the database, the electronic input, and the interactive display, where the computer processor is programmed to: calculate, based on the generated waterfall, a differential between the present value of the predetermined pricing metrics, at least a plurality of differentials being determined, identify each of the plurality of differentials as representing a respective revenue leak, each of the plurality of

differentials associated with at least one price structure element, compare each of the plurality of differentials to the at least one known price structure element, determine that a corresponding trigger is attained based on the comparing, and electronically output, via the interactive display, the results of the comparing and further outputting a plurality of buckets illustrating one or more revenue leaks, wherein the measuring portion measures each of a plurality of incentives, a plurality of commissions, a plurality of fees, an underwriting gap and a market gap.” Independent claim 1 recites similar elements. These meaningful limitations are significantly more than just “organization and comparison of data and displaying results of comparison showing revenue leaks,” as alleged by the Examiner's Answer.

Id. (underlining omitted).

The Appellants (*id.* at 5) refer to the pronouncement of the Federal Circuit, in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016), to the effect that “[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can, and sometimes the improvements can be accomplished through either route.” Thus, the Appellants appear to regard the software-driven representational techniques, set forth in the claims — e.g., the “waterfall” representation and its assorted recited features — as potentially engendering sufficient substance to establish patent-eligibility under the second *Alice* step of searching for elements (individually or in combination) that would amount to “significantly more” than an ineligible concept. *See Alice*, 134 S. Ct. at 2355. Indeed, in *Electric Power Group, LLC v. Alstom SA*, 830 F.3d 1350, 1354–55 (Fed. Cir. 2016), the Federal Circuit pointed out that “identifying a particular tool for presentation” of collected and analyzed information might be sufficient to render a claim patent-eligible, and that the earlier decision of

DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245, 1257 (Fed. Cir. 2014), involved claims providing “an arguably inventive device or technique for displaying information,” under *Alice*’s second step. After all, a particular technique for the pictorial representation of information can potentially help reveal what might otherwise remain hidden in the data themselves. See Thomas L. Hankins, *A “Large and Graceful Sinuosity”: John Herschel’s Graphical Method*, 97 *Isis* 605, 633 (2006); Edward R. Tufte, *The Visual Display of Quantitative Information* (2d ed. 2001).

Yet, the “waterfall tool” itself, as well as its critical features set forth in the claims, are encompassed by the Examiner’s unchallenged identification of the ineligible abstract idea: “analyzing a financial services product pricing process using a waterfall tool that graphically represents a plurality of predetermined price metrics and drill down metrics to manage revenue leaks and enhance price performance.” Answer 2–3. Insofar as the Appellants refer to features that might be considered under the second part of the *Alice* analysis — i.e., “a measuring portion that measures a plurality of predetermined pricing metrics using the received data,” “a determining portion that determines a present value of each of the predetermined pricing metrics,” and “a graphing portion that graphs a present value of each of the predetermined pricing metrics” (Reply Br. 5 (underlining omitted)) — they have the character of post-solution activities that cannot confer patent-eligibility. See *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (“[T]he prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity’”) (quoting *Diamond v. Diehr*, 450 U.S. 175, 191–92 (1981)).

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Accordingly, the Appellants' arguments are not persuasive of error in the rejection. Therefore, we sustain the rejection of claims 1–45 under 35 U.S.C. § 101.

DECISION

We AFFIRM the Examiner's decision rejecting claims 1–45 under 35 U.S.C. § 101.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED