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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PATRICK J. ASHER, JOSEPH ANDERSON ALFRED,
FRANK CARIELLO, JOHN MICHAEL DONOVAN,
KENNETH ALAN DUELL, SREENIVASA RAO GORTI,
ADAM HEATH HERSH, LARRY B. PEARSON,
CHRISTOPHER WALKER RICE, SHARON JAUER DURHAM,
KELLY WILLIAMS, STEVEN NEIL TISCHER,
and SANJAY MACWAN

Appeal 2017-003400
Application 12/757,456
Technology Center 3600

Before CAROLYN D. THOMAS, ADAM J. PYONIN, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–3, 5–7, 9–12, 21, and 22, which constitutes all claims pending and rejected in the current application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention is directed to an innovation pipeline, and more specifically, to a method for evaluating unique content submissions. Spec. 1–3. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method for evaluating unique content generated by a group of individual online users, comprising:

providing, via and by a tangible host server of a social networking content submission system, a webpage of a social networking website interface for a first user to submit unique content and for a second user to submit unique content;

collecting, via and by the tangible host server, first unique content provided by the first user;

collecting, via and by the tangible host server, second unique content provided by the second user;

analyzing, by the social networking content submission system, the first unique content to identify a type of the first unique content and the second unique content to identify a type of the second unique content;

identifying, by the social networking content submission system and based on the analyzing, the type of the first unique content and the type of the second unique content;

labeling the first unique content with the type of the first unique content and the second unique content with the type of the second unique content;

automatically segregating, by the social networking content submission system and based on the label of the first unique content and the label of the second unique content, the first unique content from the second unique content by

assigning the first unique content to a first group and the second unique content to a second group;

segregating a first group of rating users of the social networking content submission system from a second group of rating users of the social networking content submission by restricting the first group of rating users from evaluating the second group of unique content and by restricting the second group of rating users from evaluating the first group of unique content;

presenting the first group of unique content for evaluation by the first group of rating users to vote for submissions in the first group of unique content, and the second unique content for evaluation by the second group of rating users to vote for submissions in the second group of unique content;

accepting user input ratings from the first group of rating users and the second group of rating users so as to rate the first unique content and second unique content, the user input ratings having different weights for different users in the first group of rating users and in the second group of rating users;

evaluating, in a first evaluation stage, the first unique content and second unique content based on an automated aggregation of the user input ratings from the individual users of the social networking website interface, and

comparatively ranking the first unique content with other unique content in the first group and the second unique content with other unique content in the second group based on results of the evaluating,

wherein the first unique content is advanced based on the comparative ranking and the second unique content is not advanced based on the comparative ranking.

REJECTIONS

Claims 1–3, 5–7, 9–12, 21, and 22 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–3, 5–7, 9–12, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Si et al. (US 2012/0215773 A1; published Aug. 23, 2012) (“Si”) and Lu (US 8,311,948 B1; issued Nov. 13, 2012).

ANALYSIS

35 U.S.C. § 101 Rejection

Alice Corp. Pty. v. CLS Bank International, 134 S. Ct. 2347 (2014), identifies a two-step framework for determining whether claimed subject matter is judicially excepted from patent eligibility under 35 U.S.C. § 101. In the first step, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 134 S. Ct. at 2355.

The Examiner determines the claims are directed to “a) identifying, labeling and separating unique content submission by users in a social network; b) collecting ratings of content by users having different weights; and c) ranking content based on aggregated ratings,” which “constitute[] certain methods of organizing human activities (identifying unique social networking content submissions, collecting content ratings), and/or mathematical relationships and formulas (counting ratings/votes, ranking content based on aggregated ratings/votes).” Final Act. 2–3; *see also* Ans. 2–3. The Examiner further determines Appellants’ invention “is ultimately directed to gathering a list of ideas, rating them, ranking them selecting the

most innovated ideas for development” so “the invention embodies an idea of itself.” Ans. 3.

Appellants argue “an Abstract Idea must be supported by an Abstract Idea identified by the judiciary in a precedential decision” and “[n]o precedential decision issued by the judiciary supports the current rejection of [the] claims.” App. Br. 14.

We are not persuaded by Appellants’ arguments and agree with the Examiner’s findings and conclusions regarding the non-statutory subject matter rejection. *See* Final Act. 2–3, 13–14, Ans. 2–3. The claims are directed to collecting information (e.g., first unique content, second unique content, user input ratings), analyzing the information (e.g., identifying and labeling content, segregating content and users, evaluating content), and ranking the information (e.g., ranking content based on the results of the evaluation), which falls within the realm of abstract ideas. *See, e.g., Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (“collecting information, analyzing it, and displaying certain results of the collection and analysis” are “abstract-idea processes”); *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (“filtering content”); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337–38 (Fed. Cir. 2016) (“organizing information using tabular formats”); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed. Cir. 2014) (“organizing information through mathematical correlations”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory”).

Moreover, as the Examiner observes (Ans. 3), although certain steps in claim 1 are performed by a tangible host server, these recited steps involve acts that can be performed in the human mind, without the use of any machine, or by a human using pen and paper. For example, providing and collecting unique content can be performed via written correspondence. Likewise, analyzing, identifying, labeling, and segregating the content can be performed manually. “[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011). Mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

In the second step of the *Alice* analysis, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)). 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).

The Examiner determines the additional elements in the claims amount to no more than mere instructions to implement the idea on a

computer and/or the recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities. Final Act. 3. Specifically, the Examiner finds the technological environment “contains no more than purely functional, routine and generic components for submitting user content (including ratings about user content), labeling content, aggregating and ranking ratings without any meaningful limitations,” which is “nothing more than doing on a generic computer what can be accomplished using pencil and paper or a chalkboard.” Ans. 4. The Examiner further determines the claims “do not purport to improve the functioning of a social network or effect an improvement in any other technology or technical field.” Ans. 5.

Appellants argue “the pending claims recite significantly more than the purported abstract idea” and are

directed to a method that comprehensively provides for a system with an ordered combination of features for accepting unique content, analyzing the unique content in order to present it to a proper group of voters, enforcing voting rules to allow certain voters to vote for certain content, and allowing for advancement of the unique content with the best comparative ranking.

App. Br. 14–15. Appellants further argue the claims require a “specialized computer system, which includes a tangible host server of a social networking content submission system that uses a webpage.” Reply Br. 7; *see also* Reply Br. 8. According to Appellants, the claims recite “an innovative computer-based methodology that is a technological advancement over conventional methodologies.” Reply Br. 7; *see also* Reply Br. 8–9.

We are not persuaded by Appellants' arguments and agree with the Examiner's findings and conclusions. *See* Final Act. 3, Ans. 4–8. The claims recite a “tangible host server,” a “webpage,” a “social networking content submission system,” i.e., generic computer components, which do not satisfy the inventive concept. *See, e.g., DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal quotation marks omitted) (“[A]fter Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm ‘is beside the point.’”) Although Appellants argue a “specialized computer system” is required, Appellants do not direct our attention to, nor do we see, anything in the Specification that supports that the claim elements are anything more than generic computer elements performing generic computer functionality. For example, the Specification describes a “general computer system” that “can also be implemented as or incorporated into various devices, such as a personal computer (PC), a tablet PC, a set-top box (STB . . . or any other machine capable of executing a set of instructions” and a general “application server.” Spec. 4, 7–11; Figs. 1, 2. The Specification further describes “the computer system 100 may include a processor 110, for example, a central processing unit (CPU), a graphics processing unit (GPU), or both.” Spec. 5. As such, reading the claims to require anything other than routine and generic computer components would raise the question of whether the Specification properly enables one of ordinary skill in the art to practice the invention. *See, e.g.*, page 3 of the USPTO Memorandum on Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision

(*Berkheimer v. HP, Inc.*), April 19, 2018 (“A specification demonstrates the well-understood, routine, conventional nature of additional elements . . . in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a).”)

Moreover, some limitations do not even recite use of a computer (for example, “segregating a first group . . .,” “presenting the first group . . .,” “accepting user input ratings . . .,” “comparatively ranking . . .”), so we agree with the Examiner that “a computer is not even necessary to carry out the Appellant’s invention.” *See* Ans. 6. Thus, the mere mention of certain claimed computer hardware components in other limitations does not impose sufficiently meaningful limitations on claim scope beyond these mental steps. *CyberSource*, 654 F.3d at 1372–73, 1375.

Appellants have not adequately explained how the claims are performed such that they are not routine, conventional functions of a generic computer, nor have Appellants explained how the claims recite a technological improvement in computer capabilities. The claims at issue do not require nonconventional computer components, or even a “non-conventional and non-generic arrangement of known, conventional pieces,” but merely call for performance of the claimed presenting, collecting, analyzing, identifying, labeling, and evaluating, functions “on a set of generic computer components.” *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016).

Accordingly, we are not persuaded the Examiner erred, and we, therefore, sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 1–3, 5–7, 9–12, 21, and 22.

35 U.S.C. § 103 Rejection

Independent claim 1 recites, in part, “identifying, by the social networking content submission system and based on the analyzing, the type of the first unique content and the type of the second unique content,” (hereafter “the identifying limitation,”) “labeling the first unique content with the type of the first unique content and the second unique content with the type of the second unique content,” (hereafter “the labeling limitation”),

automatically segregating, by the social networking content submission system and based on the label of the first unique content and the label of the second unique content, the first unique content from the second unique content by assigning the first unique content to a first group and the second unique content to a second group,

(hereafter “the automatically segregating based on label limitation”), and

segregating a first group of rating users of the social networking content submission system from a second group of rating users of the social networking content submission by restricting the first group of rating users from evaluating the second group of unique content and by restricting the second group of rating users from evaluating the first group of unique content

(hereafter “the segregating and restricting limitation”).

The Examiner relies on Si to teach or suggest the identifying, labeling, automatically segregating based on label, and segregating and restricting limitations in claim 1. Final Act. 5–8; Ans. 11–12. Specifically, the Examiner finds “Appellants’ Specification discloses segregating unique submissions based on date and/or time of entry, based on labels for content of the unique submissions, or based on details of the individual submitter for each unique submission.” Ans. 11, citing Spec. ¶ 33. The Examiner relies on paragraph 22 (describing that the user-generated content can include the

content items themselves, as well as metadata associated with the user-generated content, such as a user identification or a date), and paragraphs 28, 36, and 37 (referring to timestamps of user-generated content) of Si to teach the disputed limitations, and finds “it would have been obvious to separate or segregate content by metadata.” Ans. 11–12; *see also* Final Act. 5–8.

With respect to restricting certain voters from evaluating certain content, the Examiner relies on paragraphs 8 and 19 of Si, which refer to restricting user access based on low quality contributions. Ans. 12; *see also* Final Act. 5.

Appellants argue Si “is analyzing and scoring user submissions for quality” which is “entirely different . . . [from] analyz[ing] content only to categorize/segregate the content, but users evaluate the content and submit votes based on their evaluations.” App. Br. 19; *see also* Reply Br. 10, 11, 13. Appellants further argue Si “is ultimately evaluating the users themselves in order to assign a credential score,” but claim 1 recites “users are evaluating content rather than other users.” App. Br. 19–20; Reply Br. 11. Appellants also argue Si does not teach “segregating content into groups for voting by different groups of users; or even accepting user input ratings of content” or “providing a different weighting to a user’s vote.” App. Br. 20; *see also* App. Br. 21–22, Reply Br. 11–14. In addition, Appellants argue modifying Si with the teachings of Lu would not remedy Si’s deficiencies. App. Br. 20; Reply Br. 11.

Si generally describes analyzing the quality of user-generated content so that each user and user-generated content item may be associated with a relative quality value based upon the interactions between users. Si Abstract, ¶ 18. More specifically, Si describes users interacting with each other on web sites that host user-generated content, for example, “a first user

may post a question to a discussion forum and a second user may post a response to the question,” and “[t]his exchange of information between two users may be described as an interaction.” Si ¶ 18; *see also* Si ¶ 5. Si provides for quality weighting of interactions between users and also generates user credential scores based upon interactions between users. Si ¶ 18. For example, users may be assigned authority scores or contributiveness scores. Si ¶ 18. “[U]ser interactions may be viewed as a vote of confidence, such that numerous interactions, particularly interactions involving particularly authoritative and/or contributive users, tend to increase the user credential score(s).” Si ¶ 18. With regard to the user-generated content, quality of the content is measured (e.g., topic relevance, contributiveness, descriptiveness, or reputation of the source) in order to improve the ranking of search results. Si ¶ 18.

Si describes use of a web server that includes a user-generated content repository and a user data repository. Si ¶ 22. The web server interacts with an interaction processing server that includes a content analysis module. Si ¶¶ 20, 26. The content analysis module analyzes the content and interactions represented within user-generated content and generates scores related to the relevance and quality of individual content items (interaction data) and the authority or contributiveness of each user providing user-generated content (user data). Si ¶ 26. The post analysis module (part of the content analysis module) can analyze the user-generated content item or post to produce a quality value, analyzing, for example, its relevance to the forum topic, appropriateness of language, and/or originality. Si ¶ 28, Fig. 1. A quality score is assigned to each content item. Si ¶ 28. Further, user credential scores are assigned to users by a user credential module (again, part of the

content analysis module) based on the quality of the content item provided by the user as well as the quality of the interactions the user has become involved with. Si ¶¶ 31, 33, Fig. 1. Therefore, as users submit user-generated content to the web server, the user generated content is provided to the interaction processing server where the content is analyzed and scored based upon the quality of the contributions by the post analyzer, and the user credential scores are also periodically or continually updated. Si ¶ 33.

Having considered the Examiner's findings, we agree with Appellants that the Examiner has not sufficiently explained how Si teaches or suggests the identifying, labeling, automatically segregating based on label, and segregating and restricting limitations. Although Si describes various metadata associated with the content (paragraphs 22, 28, 36, and 37), Si does not explicitly describe identifying, labeling, or automatically segregating content based upon that metadata as recited in the claim.¹ Moreover, the users in Si do not vote or provide user input ratings to rate or evaluate the user-generated content. Rather, as described above, the *system* analyzes and scores the content.² Therefore, a user cannot be segregated and restricted from evaluating content when the user does not evaluate that content in the first place.

Accordingly, we are persuaded the Examiner erred. We, therefore, do not sustain the Examiner's 35 U.S.C. § 103 rejection of independent

¹ Although Si describes that a user may have different user credential scores for different categories or labels associated with the user-generated content, Si ¶ 19, Si does not explicitly describe how these labels are identified or assigned.

² Although not relied upon by the Examiner, we note Lu describes users voting on content. *See* Lu, col. 6, ll. 1–10.

Appeal 2017-003400
Application 12/757,456

claim 1. For the same reasons, we do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 2, 3, 5-7, 9-12, 21, and 22.

DECISION

The Examiner's 35 U.S.C. § 101 rejection of claims 1-3, 5-7, 9-12, 21, and 22 is affirmed.

The Examiner's 35 U.S.C. § 103(a) rejection of claims 1-3, 5-7, 9-12, 21, and 22 is reversed

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).

AFFIRMED