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Wells Fargo Bank, N.A. c/o Nelson Mullins Riley & Scarborough, LLP One Wells Fargo Center 301 South College Street, 23rd Floor Charlotte, NC 28202			KHATTAR, RAJESH	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ILIEVA I. AGEENKO, KELLEY A. DOHERTY,
and ADRIAN PAUL VAN CLEAVE

Appeal 2017-003422
Application 12/316,967
Technology Center 3600

Before ALLEN R. MacDONALD, JOSEPH P. LENTIVECH, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ Appellants indicate the real party in interest is Wells Fargo Bank, N.A.
App. Br. 1.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–26. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

Representative Claims

Representative claims 20 and 25 under appeal read as follows
(emphasis and bracketed material added):

20. A method of ***providing lifetime financial planning***, the method comprising:

[A.] offering by a bank or a financial institution web-based access to ***generate an interactive animated timeline*** for a user,

[B.] uploading one or more images or visual cues to the computer by the user to represent a life event or a goal of the user in ***the interactive animated timeline***,

[C.] pre-filling or populating online financial data of the user from an existing financial account with the bank or the financial institution, and

[D.] ***generating by computer the interactive animated timeline*** based upon a life event and a life stage of the user along with financial information of the user to provide personalized lifetime financial planning to the user, and wherein the personalized lifetime financial plan allows the user to change a priority across the timeline and receive a modified plan.

25. The method according to claim 20, further comprising electronically ***inviting by the user another user to participate*** in creation of a composite interactive animated timeline.

References

Albright et al.	US 6,012,043	Jan. 4, 2000
Grizack et al.	US 2006/0074788 A1	Apr. 6, 2006
Carpenter et al.	US 2007/0282730 A1	Dec. 6, 2007
Boyd	US 2010/0180211 A1	July 15, 2010

Rejections

1. The Examiner rejected claims 1–26 under 35 U.S.C. § 101 “because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.” Final Act. 2. That is, because the claimed invention is directed to non-statutory subject matter.²

2. The Examiner rejected claims 1, 3–9, 12–16, 18–20, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Grizack, Albright, and Carpenter.³

3. The Examiner rejected claims 2, 11, 17, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Grizack, Albright, Carpenter, and Official Notice.⁴

² We select claim 1 as representative (but do not reproduce it herein). Separate patentability is not argued for claims 2–26. Except for our ultimate decision, we do not discuss the § 101 rejection of claims 2–26 further herein.

³ We select claim 20 as representative. Appellants do not argue separate patentability for claims 1, 3–9, 12–16, 18, 19, 23, and 24. Except for our ultimate decision, we do not discuss the § 103 rejection of claims 1, 3–9, 12–16, 18, 19, 23, and 24 further herein.

⁴ Appellants do not present arguments for claims 2, 11, 17, 21, and 22. Therefore, the § 103 rejection of these claims turns on our decision as to the § 103 rejection of claim 20. Except for our ultimate decision, we do not discuss the § 103 rejection of claims 2, 11, 17, 21, and 22 further herein.

4. The Examiner rejected claims 10, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Grizack, Albright, Carpenter, and Boyd.⁵

Issues on Appeal

Did the Examiner err in rejecting claim 1 as being directed to non-statutory subject matter?

Did the Examiner err in rejecting claims 20 and 25 as being obvious?

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments (Appeal Brief and Reply Brief) that the Examiner has erred.

A. Section 101

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. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566

⁵ Appellants argue claim 25, which we adopt as representative for this rejection. Appellants do not argue separate patentability for claims 10 and 26. Except for our ultimate decision, we do not discuss the § 103 rejection of claims 10 and 26 further herein.

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 these concepts.” *Alice*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. For example, a fundamental economic practice is an abstract idea.

[In *Bilski v. Kappos*], the Court grounded its conclusion that all of the claims at issue were abstract ideas in the understanding that risk hedging was a “‘fundamental economic practice.’” 561 U.S., at 611, 130 S. Ct. 3218.

Alice, 134 S. Ct. at 2357.

The Court acknowledged 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. 66 at 1293. 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 it is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “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*, 566 U.S. 66 at 1298, 1297).

B. Examiner's §101 Rejection - Alice/Mayo - Steps 1 and 2

Applying step 1 of the *Alice/Mayo* analysis, the Examiner concludes claim 1 is directed to an abstract idea because:

Claims 1-26 are directed to a series of steps instructing how to plan for retirement.

Final Act. 2.

Applying step 2 of the *Alice/Mayo* analysis, the Examiner concludes “[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because”:

the additional elements make use of a computer in implementing the steps of the claimed invention. In this case, the recited computer is a generically computer elements and it does not add a meaningful limitation because the computer merely implements the instructions of the claimed invention. The use of a computer also does not improve the functioning of a computer itself or include improvement to another technology or a technical field.

Final Act. 2.

C. Appellants' § 101 Arguments

Appellants raise the following arguments in contending that the Examiner erred in rejecting claim 1 as directed to non-statutory subject matter.

Appellant maintains that (i) the claims are not directed toward an abstract idea and (ii) the claims have an inventive concept that is significantly more than an abstract idea.

App. Br. 5.

In the instant case, the Examiner merely states that “[t]he Internet limitations are merely a field of use that is an attempt to limit the abstract idea to a technological environment, and so do not add significantly more.” No specific findings to support this statement have been provided. Furthermore, the claim’s

inventive concept, i.e. the point of novelty - what distinguishes the claim from the prior art, is technological.

App. Br. 5–6 (emphasis added).

The Examiner has improperly argued in the final Office Action, p. 2, . . . that “the recited computer is a generic[] computer element[] and it does not add a meaningful limitation because the computer merely implements the instructions of the claimed invention . . .”.

App. Br. 6.

We are unpersuaded by Appellants’ argument that “the claims are not directed toward an abstract idea.” The “directed to” inquiry of the first step of the Alice/Mayo analysis applies a stage-one filter to claims, considered in light of the specification, based on whether their character as a whole is directed to excluded subject matter. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). Given that Appellants’ claim 20 explicitly states it is “[a] method of providing lifetime financial planning,” we see nothing in Appellants’ *abstract idea* assertion that convinces us the Examiner failed to properly demonstrate that claim 20 is directed to an abstract idea.

We also disagree with Appellants’ argument that the § 101 rejection fails because specific Examiner findings are required to show that the Internet is not significantly more. Essentially, Appellants argue the Examiner is required to show facts to support the Internet being well-known, routine, and conventional. We disagree because Appellants’ Specification admits the Internet is well-known, routine, and conventional.

Furthermore, people today are computer-oriented. There is an increasing number of people today who use the internet and world wide web routinely for information gathering, entertainment, shopping, and financial updates. Thus, people

have come to desire most services and products to be accessible and available online on the internet.

Spec. 3.

We agree, however, with Appellants' argument (App. Br. 6) that the Examiner has improperly concluded that "the recited computer is a generic[] computer element[] and it does not add a meaningful limitation because the computer merely implements the instructions of the claimed invention." Final Act. 2. While we agree with the Examiner's conclusion as to the Internet, we find no basis for that conclusion as to the explicitly claimed "interactive animated timeline." We find no analysis in the rejection to support the "interactive animated timeline" being well-known, routine, and conventional. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) ("Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination").

We conclude, given Appellants' "interactive animated timeline" claim limitation, there is insufficient articulated reasoning to support the Examiner's finding that "the recited computer is a generic[] computer element[] and it does not add a meaningful limitation." Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner's final legal conclusion that claim 1 is directed to a judicial exception without significantly more (Final Act. 2), i.e., that the claimed invention is directed to non-statutory subject matter.

D. Section 103 Argument

1.

Appellants raise the following argument in contending that the Examiner erred in rejecting claim 20 under 35 U.S.C. § 103(a).

As set forth in Appellant's specification, a user can view the timeline information on the same screen as other financial account information of the user such as with account name, account number, posted balance, and availability. This tool can be accessible with other online banking functionality such as transfer funds, pay bills, brokerage, customer service, and view accounts (see paragraph [0016]). It is further stated in Appellant's specification that "[t]he information stored in databases is retrievable by the interactive tool. Additionally, the tool can have an interface with existing back-end computer systems. Data from back-end systems can be used to pre-fill or populate the tool if, for example, the user is an existing customer." (See paragraph [0017]) ***Appellant submits that this claimed functionality is not taught or suggested by the combination of cited references.***

App. Br. 7 (emphasis added).

As to Appellants' above contention, we are unpersuaded the Examiner erred. Although Appellants assert that the Examiner has erred, we do not find where Appellants have provide support (even to the extent of citing particular claim limitations) for these assertions. Rather, we find Appellants' assertions to be conclusory. Such unsupported attorney argument, is entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984).

2.

Appellants also raise the following argument in contending that the Examiner erred in rejecting claim 20 under 35 U.S.C. § 103(a).

As to the further combination with Carpenter, it is the position of Appellant that Carpenter does not teach or suggest the feature of the claims and *there is inadequate motivation to combine references*. The Examiner is merely relying upon Appellant's own specification for the teachings or motivation to combine references which is improper. Appellant submits that Carpenter does not make up for the shortcomings of the other references. *Nothing in Carpenter ties the interactive animated timeline to the use of pre-filled or populated online financial data as part of the timeline*. In view of the above, Appellant respectfully requests reconsideration and withdrawal of the rejection.

App. Br. 7–8 (emphasis added).

We are unpersuaded by Appellants' above contention the Examiner erred. We disagree with Appellants' assertion that nothing in Carpenter ties the interactive animated timeline to the use of pre-filled or populated online financial data. Rather, we agree with the Examiner's finding that paragraphs 43 and 104 of Carpenter disclose "in conjunction with financial data of the user pre-filled or populated online from an existing financial account with the bank or the financial institution." Final Act. 4. Further, the Examiner correctly finds that Grizack discloses "provid[ing] personalized financial planning to a user based upon financial information of the user along with a life event and a life stage of the user in an interactive animated timeline generated by the computer." Final Act. 3. Contrary to Appellants' argument, because the Examiner has shown that both Grizack and Carpenter are directed to financial data handling, we conclude there is more than sufficient motivation to combine the references.

3.

Appellants also raise the following argument in contending that the Examiner erred in rejecting claim 25 under 35 U.S.C. § 103(a).

[T]he cited references do not teach or suggest electronically inviting by the user another user **to participate in creation of a composite interactive animated timeline** (emphasis added) as claimed in claim 25. Boyd does not account for the shortcomings of the other references.

App. Br. 9.

The Examiner responds by presenting new findings as follows:

Examiner notes that Boyd discloses in [0032] that the purpose of meeting to be social networking (i.e. inviting users) and in [0066], electronically inviting users. Grizack discloses married couple may be treated as a single entity for purpose of financial planning in [0014]-[0015], i.e., composite timeline. Thus, the combination of Grizack and Boyd disclose electronically inviting by the user another user to participate in creation of a composite interactive animated timeline.

Ans. 5.

Appellants' Reply Brief at page 3 references their original argument, but does not otherwise dispute the Examiner's new findings. Therefore, we are unpersuaded that the Examiner has erred in rejecting claim 25.

CONCLUSIONS

(1) Appellants have established that the Examiner erred in rejecting claims 1–26 under 35 U.S.C. § 101, as being directed to non-statutory subject matter.

(2) The Examiner has not erred in rejecting claims 1–26 as being unpatentable under 35 U.S.C. § 103(a).

(3) Claims 1–26 are not patentable.

DECISION

The Examiner's rejection of claims 1–26 under 35 U.S.C. § 101, as being directed to non-statutory subject matter, is **reversed**.

The Examiner's rejection of claims 1–26 as being unpatentable under 35 U.S.C. § 103(a) is **affirmed**.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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