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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL RALEY and EDDIE J. CHEN

Appeal 2017-003501
Application 13/763,002
Technology Center 3600

Before MURRIEL E. CRAWFORD, MEREDITH C. PETRAVICK, and
J. JOHN LEE, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1–4, 6–9, 11–20, 22–36, 38–41 and 43–48, which are all the claims pending in the present application. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify ContentGuard Holdings, Inc., as the real party in interest. (App. Br. 1.)

CLAIMED SUBJECT MATTER

The present invention relates generally to an apparatus and method for authorizing users to “access content from multiple domains on multiple devices without having to manually manage authorization of devices.”

Independent claim 1 is illustrative of the claims on appeal and recites:

1. An apparatus of a first domain for granting access to content, in the first domain, the apparatus comprising:

one or more processors; and

one or more memories operatively coupled to at least one of the one or more processors and having instructions stored thereon that, when executed by at least one of the one or more processors, cause at least one of the one or more processors to:

authenticate a user device that is in the first domain by receiving user credentials associated with the user;

communicate with a device of a second domain that is distinct from the first domain to determine whether the user associated with the user credentials has a license to access content in the second content domain, the license specifying at least one use permission in the second domain; and

grant temporary authorization to the user device to access content in a manner within the scope of the at least one use permission in the first domain based at least in part on a determination that the user associated with the user credentials has a license to access content in the second content domain.

REJECTIONS ON APPEAL

Claims 1–4, 6–9, 11–20, 22–36, 38–41 and 43–48 stand rejected under 35 U.S.C. § 101.

Claims 1–4, 6–9, 11–20, 22–25, 27–36, 38–41 and 43–48 stand rejected under 35 U.S.C. § 112(b).

Claims 1–4, 6, 8–9, 11–20, 22, 24–25, 27–36, 38, 40–41 and 43–48 stand rejected under 35 U.S.C. § 103(a) as unpatentable in view of Johnson (US 8,443,429 B1; issued May 14, 2013) and Mayo (US 2005/0204148 A1; published Sept. 15, 2005).

ANALYSIS

A. *Rejection Under § 101 for Patent-Ineligible Subject Matter*

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include implicit exceptions; specifically, “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

Alice sets forth a two-step framework for determining whether a claim falls within one of these judicially-created exceptions. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–1297 (2012)). The first step of the framework is to determine whether the claim is “directed to a patent-ineligible concept,” such as an abstract idea. *Id.* If the claim is not directed to a patent-ineligible concept, the inquiry ends and the claim is eligible under § 101. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016). But if the claim is directed to an ineligible concept, the inquiry proceeds to the second step of the *Alice* framework. *Id.*

In the second step of the *Alice* framework, the elements of the claim at issue are considered, both “individually and as an ordered combination,” to determine whether an “inventive concept” is present. *Alice*, 134 S. Ct. at

2355. The claim is eligible if it includes an element or combination of elements that is sufficient to ensure that the claim amounts to “significantly more” than just the ineligible concept itself. *Id.*

The Examiner rejected claims 1–4, 6–9, 11–20, 22–36, 38–41 and 43–48 under § 101, concluding they are directed to an abstract ideas without additional elements that amount to “significantly more.” Final Act. 12–18. Appellants argue that the Examiner erred in both steps of the *Alice* framework. *See* App. Br. 4–7. Their arguments address the independent claims (1, 17, and 33) together, and no arguments are presented as to the dependent claims separate from those for the independent claims. *See id.* Thus, our analysis also focuses on the independent claims.

For *Alice* step one, Appellants argue (1) that the Examiner failed to explain adequately how the claim limitations are directed to an abstract idea, (2) the purported abstract idea identified by the Examiner is not an ineligible concept, and (3) the claims are not directed to an abstract idea because they are necessarily rooted in computer technology in order to overcome a problem specifically arising in computer networks similar to *DDR Holdings LLC v. Hotels.com LP*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). App. Br. 5–7. Appellants’ arguments, however, are not persuasive.

As the Examiner explained (Final Act. 3–4, 7–8), the independent claims each recite the same process of receiving user credentials to authenticate a user device, communicating with a second domain to determine whether the user credentials have a license specifying permissions in the second domain, and granting temporary authorization to access content in the first domain based on such license. The Examiner determined that the claimed invention is directed to the abstract idea of “using

credentials provided by one entity for the purpose of receiving authorization from a second entity,” and relied on a number of court cases in which similar schemes of authenticating credentials and granting conditional access to content were held to be ineligible abstract ideas. *Id.* at 4–6. Thus, the Examiner analyzed the claim limitations and properly compared them to similar examples in case law to explain why the claims are directed to an ineligible abstract idea. *See Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (applying the methodology of comparing to prior cases to determine whether a claim is directed to an abstract idea). Appellants’ conclusory assertions that the Examiner did not do so are not persuasive. *See* App. Br. 5 (alleging “no explanation”); Reply Br. 2 (alleging the Examiner did not provide “any reasoning”).²

Appellants also fail to demonstrate that the Examiner’s analysis is incorrect. Despite contending that the abstract idea identified by the Examiner is “not an abstract idea within the meaning of 35 U.S.C. § 101 and is not similar to any abstract ideas in previous court decisions,” Appellants do not address any of the court decisions relied on by the Examiner.

Further, Appellants’ reliance on *DDR* is misplaced. According to Appellants, the present invention “is directed to overcoming inefficiencies associated with computer networks,” and consequently are “necessarily

² Indeed, despite faulting the Examiner for purportedly failing to address the claim limitations (App. Br. 5) and oversimplifying the claims (Reply Br. 2), Appellants do not identify any claim limitation(s) as demonstrating that the claims are not directed to an abstract idea, and only characterizes the claimed invention as a “technique [that] improves content access technology by allowing users to access content from multiple domains on multiple devices without having to manually manage authorization of devices.” App. Br. 5–6.

rooted in computer technology in order to overcome these inefficiencies.” App. Br. 6; *see also* Reply Br. 2–3. These arguments are unpersuasive. In *DDR*, the claims at issue related to a problem unique to the workings of Internet hyperlinks. *See DDR*, 773 F.3d at 1257. As the Examiner found, the present invention addresses a problem “similar to that of having a driver’s license, a birth certificate or other credential issued by one jurisdiction being considered valid in a different jurisdiction” such that “the problem is not one that is unique to the Internet world.” Final Act. 4; *see also* Ans. 20 (explaining that the present invention does not address a “technological problem” but rather “one involving the organization of human activity” similarly to using authenticating documents from one authority to access services from a different authority). Although Appellants show that this problem exists in a setting involving computer networks (Reply Br. 3 (citing Spec. ¶¶ 6–8)), no evidence is cited to demonstrate that this problem is unique or specific to such an environment. Thus, even though the claims “have nothing to do with driver’s licenses or birth certificates” (App. Br. 7), we agree with the Examiner’s finding that the character of the claims is similar for purposes of determining whether the claims are directed to an abstract idea.

With respect to *Alice* step two, Appellants present only conclusory attorney argument that fails to show any error in the Examiner’s analysis. Appellants several times aver that the claims present an “inventive concept” (Reply Br. 4) and offer “significantly more” than an abstract idea because of limitations that are not “well-understood, routine and conventional in the field” (App. Br. 6), but no such limitations are identified. Although Appellants note that the claims recite granting “temporary authorization” in

a domain based on checking credentials in a different domain, they do not explain or even assert that this limitation is sufficient to add “significantly more” to the abstract idea of the claim, nor is it evident from the brief paragraph of the Specification cited. *See* App. Br. 6 (citing Spec. ¶ 79). Similarly unpersuasive is Appellants’ argument that the Examiner failed to consider the “ordered combination of claim elements”—Appellants do not identify any individual element or combination of elements that were not considered. *See* Reply Br. 4. Moreover, the Examiner clearly considered the claim limitations, including as an ordered combination. Final Act. 13. In sum, Appellants fail to identify any specific aspect of the Examiner’s *Alice* step two analysis that is erroneous, much less provide persuasive argument, authority or evidence to demonstrate such error.³

For the above reasons, we sustain the Examiner’s rejection of claims 1–4, 6–9, 11–20, 22–36, 38–41 and 43–48 under § 101.

B. Rejection Under § 112(b) for Indefiniteness

The Examiner rejected claims 1–4, 6–9, 11–20, 22–25, 27–36, 38–41 and 43–48 under § 112(b) as indefinite. Final Act. 18–19. Specifically, the Examiner determined that the claim term “manner” in the phrase “grant temporary authorization to the user device to access content in a manner within the scope of the at least one use permission” is indefinite because it

³ Appellants note that the Examiner incorrectly referenced a “second domain” in the Examiner’s Answer where the correct term should have been “first domain.” Reply Br. 1–2. Although Appellants are correct, we are not persuaded this establishes reversible error because the Examiner did not make the same mistake in the Final Action.

fails to apprise those skilled in the art of the scope of the claim. *Id.*; Ans. 21. The term is recited in each of the independent claims.

Appellants argue that the term “manner” is not indefinite because the claim makes clear that the user is authorized to access content in a manner “within the scope of the at least one use permission,” which defines the scope of the term. App. Br. 7–8; Reply Br. 5–6. We agree. The claim specifies that the term “manner” is bounded by the requirement that it be “within the scope of the at least one use permission.” The Examiner did not indicate that the limitation “scope of the at least one use permission” is indefinite. Thus, we reverse the Examiner’s rejection of claims 1–4, 6–9, 11–20, 22–25, 27–36, 38–41 and 43–48 under § 112(b).

C. Rejection Under § 103(a) for Obviousness

The Examiner rejected claims 1–4, 6, 8–9, 11–20, 22, 24–25, 27–36, 38, 40–41 and 43–48 as obvious in view of Johnson and Mayo. Final Act. 19–23. According to Appellants, the Examiner erred in finding that Mayo teaches communicating with a second domain (distinct from the first domain) to determine whether the user has a license specifying at least one use permission for accessing content on the second domain, a limitation recited in each of the independent claims. App. Br. 8–10. Appellants argue all of the rejected claims together and do not address any claim individually. *Id.* More specifically, Appellants argue that (1) Mayo teaches away from the claimed invention because it teaches the use of session cookies/tokens, (2) Mayo does not teach access based on a use permission but rather teaches granting full access, and (3) Mayo’s cookies/tokens do not teach the recited

license specifying a use permission. App. Br. 8–10. Appellants’ arguments are not persuasive.

First, Appellants fail to identify any evidence, or even allege, that Mayo criticizes, discredits, or otherwise discourages communicating with a second domain in the manner claimed in the present application. Thus, Appellants have not established that Mayo teaches away from the claimed invention. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

Second, Appellants are incorrect that Mayo does not teach granting access according to use permissions rather than full access to all content. In Mayo, a user establishes a session with “second domain 24” while having previously logged into “first domain 18.” Mayo ¶ 57. The user makes a request for resources at second domain 24, which is redirected to first domain 18. *Id.* Security service 26 creates a secure token or tag that verifies the user’s status on first domain 18. *Id.* As the Examiner found (Final Act. 10), Mayo teaches that “the nature or types of resources that the user is authorized or permitted to access” may be disclosed via a secure token. Mayo ¶ 57. The secure token helps “establish the resources which the user is authorized to access, and which the second domain [24] is authorized to display to the user.” *Id.* We agree with the Examiner’s finding that these disclosures of Mayo teach the relevant limitations of the present claims.

Finally, we are not persuaded by Appellants argument that the tokens in Mayo fail to teach the recited license specifying a use permission. *See* App. Br. 9–10. As discussed above, the Examiner found that Mayo teaches a secure token that relays information regarding the nature/types of resources that the user is permitted to access. *See* Final Act. 10 (citing Mayo ¶ 57). Although Appellants assert conclusorily that “Mayo does not relate to

licenses at all” (App. Br. 9), no evidence is presented to rebut the Examiner’s finding that the information relayed by the tokens in Mayo teach the recited use permission specified by a license. Appellants further argue that Mayo’s cookies/tokens are temporary and “disappear[] when the browsing session ends.” *Id.* at 9–10 (citing Mayo ¶ 28). The cited portion of Mayo, however, does not support Appellants argument, in fact disclosing that cookies “may” be temporary, or may instead be “persistent,” *i.e.*, not deleted at the end of the session. Mayo ¶ 28. Further, Appellants do not identify any evidence indicating that the recited license specifying a use permission should be construed to exclude temporary cookies or tokens.

For the above reasons, we are not persuaded of error in the Examiner’s rejection of claims 1–4, 6, 8–9, 11–20, 22, 24–25, 27–36, 38, 40–41 and 43–48 as obvious in view of Johnson and Mayo, and we sustain the rejection as a result.

DECISION

We AFFIRM the Examiner’s rejection of claims 1–4, 6–9, 11–20, 22–36, 38–41 and 43–48 under 35 U.S.C. § 101.

We REVERSE the Examiner’s rejection of claims 1–4, 6–9, 11–20, 22–25, 27–36, 38–41 and 43–48 under 35 U.S.C. § 112(b).

We AFFIRM the Examiner’s rejection of claims 1–4, 6, 8–9, 11–20, 22, 24–25, 27–36, 38, 40–41 and 43–48 under 35 U.S.C. § 103(a).

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. § 1.136(a)(1)(iv).

AFFIRMED