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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID JONATHAN LEMPHERS, MATTHEW MATEY,
CHRISTOPHER COUHAULT, and ALEXANDROS SUVACIOGLU¹

Appeal 2017-003612
Application 13/830,666
Technology Center 3600

Before CARLA M. KRIVAK, CAROLYN D. THOMAS, and
HUNG H. BUI, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 25–50. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as RetailMeNot, Inc., of Austin, Texas.

STATEMENT OF THE CASE

Appellants' invention is directed to "the field of online shopping, data manipulation, and publication of online deals and coupons." (Spec. ¶ 1).

Independent claim 25, reproduced below, is exemplary of the subject matter on appeal.

25. A method, comprising:

obtaining, by one or more processors, deal content from a plurality of deal providers, the deal content from each deal provider including a plurality of deals or coupons, each deal or coupon being described in the respective deal content by a corresponding record having a plurality of fields of information, including a text description of the respective deal or coupon and an affiliate link corresponding to the deal provider from which the respective deal or coupon was obtained;

for each deal provider, for each deal or coupon from the respective deal provider, calculating, by one or more processors, a corresponding hash code based on two or more of the fields of information in the record corresponding to the respective deal or coupon from the respective deal provider;

matching, by one or more processors, deals or coupons from different deal providers by determining that the matched deals or coupons have identical hash codes, the matching producing groups of duplicate deals or coupons from different deal providers and the same respective advertiser, wherein at least some of the groups of duplicate deals or coupons contain matched deals or coupons that are described differently, at least in part, by corresponding records from the different deal providers;

for each group of duplicate deals or coupons, scoring, by one or more processors, the deals or coupons in the respective group of duplicate deals or coupons based, at least in part, on compensation terms offered by the deal provider from which the respective deal or coupon was received;

for each group of duplicate deals or coupons, selecting, by one or more processors, a deal or coupon within the group of

duplicate deals or coupons based, at least in part, on the score of the selected deal or coupon relative to the scores of other deals or coupons in the respective group of duplicate deals or coupons; and

designating, by one or more processors, the affiliate link of the selected deal or coupon in memory for distribution to consumers in place of affiliate links of unselected deals coupons in each group of duplicate deals or coupons.

REFERENCES and REJECTIONS

The Examiner rejected claims 25–50 under 35 U.S.C. § 112 (a) or 35 U.S.C. 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement.

The Examiner rejected claims 25–50 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

The Examiner rejected claims 25, 26, 32, 34–39, 45, and 47–50 under 35 U.S.C. § 103(a) based upon the teachings of Pastusiak (US 2006/0129501 A1; June 15, 2006), Tollinger (US 2010/0088166 A1; Apr. 8, 2010), and Anavi (US 2001/0034644 A1; Oct. 25, 2001).

The Examiner rejected claims 27–31 and 40–44 under 35 U.S.C. 103(a) based upon the teachings Pastusiak, Tollinger, Anavi, and Davies (US 2007/0129997 A1; June 7, 2007).

The Examiner rejected claims 33 and 46 under 35 U.S.C. 103(a) based upon the teachings Pastusiak, Tollinger, Anavi, and Ramachandran (WO 2003/044711 A1; May 30, 2003).

ANALYSIS

Rejection under 35 U.S.C. § 112

The Examiner finds “claims 25 and 38 recite, ‘Calculating a corresponding hash code based on two or more of the fields of information,’ and claims 27–33, and 40–46 recite, ‘calculating the hash code,’ but do not recite how a corresponding hash code and the hash code are being calculated” (Final Act. 3). Thus, the Examiner asserts the “specification does not explicitly provide a description, equation, or table on how the hash code is generated” (*id.*). The Examiner’s Answer asserts Appellants’ Specification states the hash code is “generated” which is different from calculating (Ans. 9-10).

Appellants contend the Examiner erred as hash codes are the result of a calculation (the ‘term ‘hash code’ necessarily connotes ‘calculating’”) (App. Br. 12). We agree.

As Appellants allude, many different algorithms are used to generate hash codes (for coupons or other various reasons) using a cryptographic function (there are standard hash functions). We also agree, in this instance, generating a hash code and calculating a hash code are synonymous, and Appellants’ Specification does explain how a hash code is generated for each deal or coupon (*see* Spec. ¶¶ 57-59; App. Br. 13 (*Fonar Corp. v. Gen. Elec. Co.*, 107 F.3d 1543, 1549, (Fed. Cir. 1997) “As a general rule, ... flow charts or source code listings are not a requirement for adequately disclosing the functions of software.”). Further, we note “what is conventional or well known to one of ordinary skill in the art need not be disclosed in detail (*see Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986); *see also Capon v. Eshhar*, 418 F.3d 1349, 1357, (Fed. Cir.

2005) “The ‘written description’ requirement must be applied in the context of the particular invention and the state of the knowledge.... As each field evolves, the balance also evolves between what is known and what is added by each inventive contribution.”).

We, therefore, find there is written description support for the scope of the claims and do not sustain the Examiner’s rejection of claims 25–50 under 35 U.S.C. § 112, first paragraph.

Rejection under 35 U.S.C. § 101

Appellants contend the Examiner erred in finding the subject matter of claims 25–50 are patent-ineligible under 35 U.S.C. § 101 for the reasons that: the Examiner has not established a prima facie case of ineligibility (App. Br. 5); the Examiner does not correctly identify the subject matter of the claims (App. Br. 6); the claims are not directed to a fundamental economic practice (App. Br. 10); the claims are directed to an improvement in computer functionality (App. Br. 7); and the claimed solution is rooted in computer technology (App.Br. 11). We do not agree.

Alice Corp. Pty. Ltd. 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 § 101. According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355. If the claims are directed to a patent-ineligible concept, the second step in the analysis considers the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a

patent-eligible application.” *Id.* (citing *Mayo*, 566 U.S. at 78–79). In other words, the second step “search[es] 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.* (citing *Mayo*, 566 U.S. at 72–73

Initially we note claims 25–50 are argued together, thus we chose independent claim 25 for our analysis.

The Examiner finds the claims are directed to “non-statutory subject matter because the claims as a whole, considering all claim elements both individually and in combination, do not amount to significantly more than an abstract idea . . . of selecting a deal content which is considered a fundamental economic practice” (Final Act. 4). The Examiner states the claims are directed to “selecting a deal content, obtaining deal content from a plurality of deal providers, calculating a corresponding hash code on two or more fields . . . , matching deals . . . by determining that the matched deals . . . has identical hash codes, scoring the deals . . . , selecting a deal” (Ans. 3–4, *citing SmartGene, Cyberfone, and Ultramercial*). Thus, we find the Examiner has correctly identified the invention and has provided a prima facie case under 35 U.S.C. § 132, which sets forth a general notice requirement whereby Appellants are notified of the reasons for a rejection together with such information as may be useful in judging the propriety of continuing with prosecution of the application (*see, e.g., In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011); see also July 2015 Update 6 (setting forth a general notice requirement whereby the Examiner should “clearly articulat[e] the reason(s) why the claimed invention is not eligible” when rejecting on under 35 U.S.C. § 101); May 2016 Memorandum 2 (“the

rejection . . . must provide an explanation . . . which [is] sufficiently clear and specific to provide applicant sufficient notice of the reasons for ineligibility.”)). In this case, we find the Examiner has provided an adequate explanation to meet the notice requirement.

We also disagree with Appellants that the claims are not directed to a fundamental economic practice (App. Br. 10). We agree with the Examiner that selecting a coupon and presenting it to a user to redeem is a fundamental economic practice (Ans. 8). Additionally, we also agree the claims can be performed between people (*id.*).

Appellants’ claims are also not necessarily rooted in computer technology (App. Br. 11–12). Rather, as the Examiner finds, matching duplicate deals is similar to performing repetitive calculation on data, which can also be done using pen and paper (Ans. 8).

Because we agree with the Examiner that the claims are directed to selecting deal content (i.e., a fundamental economic practice) (*see* Final Act. 4), the claims at issue are directed to an abstract idea.

We now turn to the second step of the *Alice* framework:

Contrary to Appellants’ contentions, we find the claims do not improve the computer’s functionality (App. Br. 7–10). As the Examiner asserts, and we agree, the computer is routine and conventional and the claims do not add any “meaningful limitations that amount to more than generally linking the use of the exception to a particular technological problem” (Ans. 5–7). Further, Appellants’ Specification and claims describe generic computing elements performing generic computing functions (Ans. 5, citing Appellants’ Specification ¶¶ 38, 39, 41 (nothing more than generic computer devices disclosed)).

For the above reasons, we sustain the Examiner's rejection of claims 25–50 as directed to non-statutory subject matter under 35 U.S.C. § 101.

Rejection under 35 U.S.C. 103

The Examiner finds Pastusiak teaches most of the claim limitations, except “Pastusiak does not explicitly teach that coupons are matched by determining that they have identical hash codes. However, Tollinger, in paragraph [0005], teaches that coupons are matches[sic] together according to certain features” (Final Act. 7–11). The Examiner then finds “Pastusiak and Tollinger do not teach an affiliate link corresponding to the deal provider” and designating the affiliate link of the selected deal for distribution, but relies on Anavi for these limitations (Final Act. 11).

Appellants contend Tollinger teaches matching coupon requested coupon content to a plurality of coupons in a database, and not to a plurality of duplicate coupons as claimed (App. Br. 13). That is, Appellants assert, “Tollinger's matching is to a user query, not between duplicate coupons,” which is not the same as matching deals or coupons from different deal providers and the same advertiser as claimed (*id.*). Appellants also assert Tollinger does not teach “determining that the matched deals or coupons have identical hash codes” (*id.*).

The Examiner, in the Answer, explains Pastusiak was used to teach codes assigned to a coupon and Tollinger was used to teach duplicate deals of coupons (Ans. 10). We do not agree.

As Appellants assert in the Reply Brief, even with the Examiner's newly added citations and explanation, Pastusiak discloses a “system that stores cryptographic signatures of ‘tokens’ for security reasons in the form

of hash values” and therefore, the “coupons that are described differently’ would generate different hash values, which would not match” (Reply Br. 10–11). We also agree with Appellants that Tollinger does not cure this deficiency (*id.*) nor does Anavi.

Thus, we conclude the collective teachings of Pastusiak, Tollinger, and Anavi, do not render obvious Appellants claimed invention. We therefore, do not sustain the Examiner’s rejection of claims 25–50 under 35 U.S.C. § 103.

DECISION

The Examiner’s decision rejecting claims 25–50 under 35 U.S.C. § 112 is reversed.

The Examiner’s decision rejecting claims 25–50 under 35 U.S.C. § 101 is affirmed.

The Examiner’s decision rejecting claims 25–50 under 35 U.S.C. § 103 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