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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ABHISHEK GUPTA, TINGTING CUI, ZANG LI,
ANMOL BHASIN, and SACHIN REKHI

Appeal 2017-003689¹
Application 14/479,127²
Technology Center 3600

Before JASON V. MORGAN, JEREMY J. CURCURI, and
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–7 and 10–20. We have jurisdiction under 35 U.S.C. § 6(b)(1).

We affirm.

¹ Our Decision references Appellants’ Appeal Brief (“Appeal Br.,” filed Apr. 15, 2016), and the Examiner’s Answer (“Answer,” mailed Aug. 24, 2016) and Final Office Action (“Final Action,” mailed Nov. 20, 2015).

² Appellants identify LinkedIn Corporation as the real party in interest. App. Br. 2.

Appellants' Specification

Appellants' Specification relates to onboarding a user to a sales tool, retrieving usage information related to that user from a social networking service, and generating entities based on the usage information. Spec., Abstract. These entities may include companies, other organizations, accounts, contacts, or sales leads. Spec. ¶¶ 36, 68; p. 28 (originally filed claim 7). A score is calculated for each entity, "indicating a likelihood that the first user will wish to receive insights" regarding the entity from the sales tool. *Id.*, Abstract. The entities are ranked based on the scores. *Id.*

Representative Claim

The claims are directed to determining financial risk based on the items purchased in a transaction. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A computer-implemented method comprising:
 - receiving a request to onboard a first user to a software tool;
 - obtaining usage information related to the first user from a social networking service;
 - wherein the usage information includes information on which profile web pages within the social networking site the first user viewed and how many times each of the profile web pages was viewed by the first user, the social networking site having a plurality of different profile web pages;
 - generating one or more entities in the software tool based on the usage information from the social networking site;
 - calculating a score for each of the one or more entities, the score for a particular entity being calculated based on the number of times a profile web page in the social networking site for the particular entity was viewed by the first user, an amount of time the profile web page was viewed by the first user, one or more computer commands executed by the first user while viewing the

profile web page, and a number of communications sent between the first user and the particular entity;

ranking the one or more entities based on the calculated score for each of the one or more entities;

adding the one or more entities as entries in the software tool based on the ranking;

performing a database search, on a news article database, for each of the one or more entities to identify any recent news articles tracked by the social networking site that mention any of the one or more entities; and

providing results of the news article database search to the first user.

App. Br. 31 (Claims Appendix).

REJECTIONS

Claims 1–7 and 10–20 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Action 6–13.

Claims 1–7, 10–12, 18, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brydon et al. (US 2006/0026033 A1; Feb. 2, 2006) (“Brydon ’033”); Brydon et al. (2006/0136419 A1; June 22, 2006) (“Brydon ’419”); Singh (US 2010/0131339 A1; May 27, 2010); and Neil Mansilla, Comment to *With Google News API Going Away, What Is The Best Option for Company News Search/Feed*, QUORA (Aug. 15, 2012), <https://www.quora.com/With-Google-News-API-going-away-what-is-the-best-option-to-add-a-company-news-search-feed-to-a-website> (“Mansilla”). Final Action 14–30.

Claims 13 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brydon ’033, Brydon ’419, Singh, Mansilla, and McCormack et al. (US 2012/0084340 A1; Apr. 5, 2012) (“McCormack”). Final Action 30–32.

Claims 14, 16, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brydon '033, Brydon '419, and Singh. Final Action 33–43.

Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over Brydon '033, Brydon '419, Singh, and McCormack. Final Action 43–46.

REJECTION UNDER 35 U.S.C. § 101

Standard for Patent Eligibility

To be statutorily patentable, the subject matter of an invention must be a “new and useful process, machine, manufacture, or composition of matter, or [a] new and useful improvement thereof.” 35 U.S.C. § 101. In issues involving subject matter eligibility, our inquiry focuses on whether the claims satisfy the two-step test set forth by the Supreme Court in *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014). The Supreme Court instructs us to “first determine whether the claims at issue are directed to a patent-ineligible concept.” *Id.* at 217. If the initial threshold is met, we then move to the second step, in which 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.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). The Supreme Court describes the second step as a 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.* (quoting *Mayo*, 566 U.S. at 72–73).

The USPTO recently published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (“Memorandum”).

Under that guidance, we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (*see* Memorandum, 84 Fed. Reg. at 54 (Step 2A – Prong One)); and

(2) additional elements that integrate the judicial exception into a practical application (*see* Memorandum, 84 Fed. Reg. at 54–55 (Step 2A – Prong Two); MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Memorandum, 84 Fed. Reg. at 56 (Step 2B).

Examiner’s Determinations and Conclusion

In the first step of the *Alice* inquiry, the Examiner determines the claims are directed to an abstract idea, namely, “the abstract idea of organizing, storing, and presenting information to carry out comparing new

and stored information and using rules to identify options.” Final Action 9. The Examiner reasons that the recited steps in the claims are “similar to abstract ideas identified by the Federal Circuit in *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 Fed. Appx. 950 (Fed. Cir. 2014) (nonprecedential).” *Id.* at 9–10.

Additionally, the Examiner determines that the claims “could equally be characterized” as one of “certain methods of organizing human activity” which are also abstract. *Id.* at 10–11 (citing *July 2015 Update on Subject Matter Eligibility*, 80 Fed. Reg. 45,429 (July 30, 2015)). The Examiner finds that, while the word “sales” was removed from the claims, the claimed invention “is directed to a computer-based tool to generate sales leads for marketing or sales purposes.” *Id.* at 11. The Examiner emphasizes that “certain methods of organizing human activity” is discussed as relating to “interpersonal and intrapersonal activities,” “social activities,” and “advertising, marketing, and sales activities or behaviors.” *Id.* at 10–11.

The Examiner then determines that additional elements in the claims do not amount to significantly more than the abstract idea itself. *Id.* at 11–13. The Examiner finds, echoing language from MPEP 2106.05(d), “the invention merely relies on a generic computer to perform computer functions that are well-understood, routine and conventional activities previously known to the industry. *Id.* at 12. The Examiner additionally finds, echoing language found in MPEP 2106.05(d) and (h), that the claims do not provide meaningful limitations beyond generally linking an abstract idea to a particular technological environment and a particular context.” *Id.* at 12–13.

Appellants' Contentions

Appellants present several arguments in favor of eligibility. First, Appellants argue that the Examiner improperly “seems to consider any activities performed by a computer to be somehow ‘conventional’” and that this is contrary to precedent, in which even claims implemented using “well-known, routine, and conventional” may be patent-eligible. App. Br. 19–20 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). Appellants argue that the Examiner failed to provide evidence that the “actual effect” of the recited elements is conventional. *Id.* at 20.

Appellants additionally argue that the Examiner is incorrect in finding that the claims are directed to a computer-based tool to generate sales leads. *Id.* at 21. Appellants contend that while they “recognize[] that the specification mentions one disclosed possible use of the software tool . . . as being to generate sales leads,” the claims do not actually recite the sales aspect and “one possible use of a claimed invention is not a description of what the invention is ‘directed to.’” *Id.* at 21–22.

Appellants aver that the claim includes two processes – first that of onboarding a user (including adding entities to a software tool), and second, using the entities in the software tool (including performing a database search and providing the results to the user). *Id.* at 22. The first, at least, Appellants argue, is not abstract. *Id.* “Put another way, the presence of a potentially abstract use of an otherwise non-abstract invention does not render the entire claim abstract.” *Id.*

Appellants argue that the Examiner further erred, having found that the claims are directed to an abstract idea, that they are not nonetheless directed to patentable subject matter, in the second step of the *Alice/Mayo*

determination. *Id.* at 23–24. Appellants argue that the claims recite a specially-configured computer, solve a technological problem in conventional industry practice, and contain a limitation (that of “calculating a score for each of the one or more entities . . .”) which is not purely conventional. *Id.* at 24–27. Appellants further contend that the claims overcome a problem specifically arising in a particular computer realm, noting that social networking did not exist prior to “the rise in prominence of the Internet and the proliferation of computer technology.” *Id.* at 28.

Appellants further argue that the claims would not preempt any abstract ideas. *Id.* at 29.

Our Review

Applying the guidance set forth in the Memorandum, we are not persuaded of Examiner error. The Memorandum instructs us first to determine whether any judicial exception to patent eligibility is recited in the claim. The guidance identifies three judicially-expected groupings: (1) mathematical concepts, (2) certain methods of organizing human activity such as commercial or legal interactions (including “marketing or sales activities or behaviors”) fundamental economic practices and “managing personal behavior or relationships or interactions between people”, and (3) mental processes. We focus here on the second grouping.

Claim 1 recites [A] a computer-implemented method comprising the following steps: “[B] receiving a request to onboard a first user to a software tool”; “[C] obtaining usage information related to the first user from a social networking service . . .”; “[D] “generating one or more entities in the software tool based on the usage information from the social networking site”; “[E] calculating a score for each of the one or more entities . . .”; “[F]

ranking the one or more entities based on the calculated score for each of the one or more entities”; “[G] adding the one or more entities as entries in the software tool based on the ranking”; “[H] performing a database search, . . . for each of the one or more entities”; and “[I] providing results of the news article database search to the first user.”

We agree with the Examiner that these limitations, under their broadest reasonable interpretation, recite the fundamental economic practice of generating sales leads for marketing or sales purposes. Final Action 10–11. The limitations all recite the operations that would ordinarily take place in generating such sales leads. For example, limitations [C] and [D] identify potential leads from among a user’s social network. Limitations [E] through [G] filter the leads based on information about the user’s interactions with them. Limitations [H] and [I] provide the user with additional information regarding the identified and filtered leads.

Appellants are correct that the specific use of the claimed method in sales lead generation is not included in the claim (App. Br. 21–22). However, we agree with the Examiner that consideration of the claims in light of the specification is proper. “A determination of what the claims are directed to is often aided by a consideration of the specification and its description of the problem to be solved and the discovered solution to that problem. The specification is a useful aid in the court’s determination of the thrust of the invention or what the inventors ‘characterize [as] their contribution to the art.’” *Smart Sys. Innovs., LLC v. Chicago Transit Authority*, 873 F.3d 1364, 1379 (Fed. Cir. 2017) (citing *In re Diehr*, 602 F.2d 982, 983 (CCPA 1979)). We therefore agree with the Examiner’s consideration of the claims as directed to sales lead generation.

The use of a user’s social network information to identify sales leads is a practice found in sales and marketing activities, which involves the stream of commerce. Thus, like the concept of intermediated settlement in *Alice*, and the concept of hedging in *Bilski v. Kappos* (561 U.S. 593 (2010)), the concept of sales lead generation recited in Appellants’ claims “is a fundamental economic practice long prevalent in our system of commerce.” *Alice*, 573 U.S. at 216 (citations and internal quotation marks omitted). Accordingly, we conclude the claims recite a fundamental economic practice, which is one certain methods of organizing human activity identified in the Revised Guidance, and thus an abstract idea.

Having determined that the claims recite a judicial exception, our analysis under the Memorandum turns to determining whether the claims “amount to significantly more” – whether there are “additional elements that integrate the judicial exception into a practical application.” MPEP § 2106.05(a)–(c), (e)–(h)); Memorandum, 84 Fed. Reg. at 54–55.

Appellants argue that the claim limitation directed to “obtaining usage information related to the first user from a social networking service . . .” relates to “operations . . . that simply did not exist prior to the rise in prominence of the Internet.” Appeal Br. 28. We agree with the Appellants that the claims at issue are not generic automation of a traditional technique. *See BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016). Instead, the claims recite using specific information from usage information from a social networking service to calculate a score, which is significantly more than the judicial exception regarding certain methods of organizing human activity. *See McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1314–1316 (Fed. Cir. 2016).

As such, we conclude the judicial exception in claim 1 is integrated into a practical application, and therefore we reverse the rejection of claim 1, and claims 2–7 and 10–20, rejected on a similar basis, under 35 U.S.C. § 101.

REJECTION UNDER 35 U.S.C. § 103(a)

We affirm the rejection under 35 U.S.C. § 103(a). In rejecting claim 1 as obvious over a combination of Brydon '033, Brydon '419, Singh and Mansilla, the Examiner finds, *inter alia*, that Singh teaches obtaining usage information from a social networking service, including information on which profile web pages within the social networking service the user viewed, how many times each profile web page was viewed and how much time the user spent viewing a profile web page. Final Action 20 (*citing* Singh claim 3).

Appellants argue that Singh is “a reference wholly lacking in description” and that it does not teach the elements the Examiner finds to be taught therein. Appeal Br. 11–14. Appellants additionally argue that claim 3 of Singh, which the Examiner relies upon, is not supported by the written description of Singh. *Id.* at 12. With respect to this latter argument, we agree with the Examiner that Singh as a prior art reference is not subject to the requirements of 35 U.S.C. § 112(a), and that the proper evaluation of Singh centers on what would Singh would reasonably have made known to a person of ordinary skill in the art. Answer 5–6.

Appellants specifically argue that Singh’s disclosure does not teach, as part of a user’s browsing information, the number of repeat visits to a page. Appeal Br. 12–13. Appellants argue that “number of repeat visits” in

Singh's claim 3 must refer to number of repeat visits to a particular website and not to a particular page. *Id.* However, we agree with the Examiner that Singh's claim 3 limitation relating to the tracking of "number of repeat visits" teaches or suggests to the tracking of repeat visits to a page. *See* Answer 9–10. Singh's claim teaches collecting information about website users (Claim 1, from which claim 3 indirectly depends) including browsing information relating to the date, time, and "title and meta-tags of pages visited by user," and that "similar (including the above information) information from previous visits to this website by the same user." Singh, Claims 1, 3. Thus Claim 3 specifically relates to the collection of data including title of pages visited by a user on a specific visit and previous visits. We agree with the Examiner that one of ordinary skill in the art would find in Claim 3 the teaching or suggestion of the tracking of the number of repeat visits to a page.

Appellants additionally argue that Singh fails to teach or suggest calculating "an amount of time" a web page was viewed. Appeal Br. 13. Appellants argue that Singh's claim limitation of tracking, for a user's visit to pages on a website, "time spent" does not teach or suggest the time spent on each page, as "there are numerous possible interpretations of 'time spent'" and that any ambiguity is fatal to the Examiner's findings. *Id.* We disagree. Singh discusses tracking for information about the user's browsing on a website, including, for example, "time spent hovering over a hyperlink." Singh Claim 3. In the context of a claim relating in part to such tracking of granular information relating to a user's visit to pages on a website, we disagree with Appellants that one of ordinary skill in the art would read "repeat visits" to be devoid of context. *See* App. Br. 13

(“[T]here is nothing even tying the ‘time spent’ to anything computer related other than the assumption that it is so merely because this metric is clustered in with metrics that are computer related.”) We note that Singh’s claim 3 (directly or through dependency) recites “collecting information about [a] website user” including “user’s browsing information” which includes “time spent hovering over a hypelink/hypertext/anchor text, over other text, and over non-text elements,” “number of pages visited, [and] time spent.” Singh Claims 1–3. We acknowledge the ambiguity argued by the Appellants, although we do not agree that the term is as ambiguous as Appellants argue. *See* App. Br. 13 (“There is nothing even tying the ‘time spent to anything computer related other than the assumption that it is so merely because this metric is clustered in with metrics that are computer related.”) We look to the reference “to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826 (CCPA 1968). We agree with the Examiner (Answer 6–13), adopting the Examiner’s reasoning and analysis, that one of ordinary skill in the art at the time of the invention, reading the entirety of Singh’s Claim 3 and the claims from which that claims depend, would have found the teaching or suggestion of the tracking of time spent on a specific web page.

Appellants argue that the rejection of claim 1 “is deficient as it pertains to an outdated version of the claims,” relating to a “sales tool” rather than a “software tool.” Appeal Br. 13–14. However, we disagree that the Examiner’s rejection does not show how the changed claim language is taught or suggested in the prior art, and additionally note that the change in claim language is addressed by the Examiner in the rejection. *See* Final

Action 17. Thus, we find no error in the Examiner's obviousness rejection of claim 1, or claims 2–7, 10–13, and 18–20, argued on the same basis (Appeal Br. 14, 16).

Appellants argue that the rejection of claim 14 is additionally flawed because Singh does not teach or suggest “a social networking information analyzer configured to . . . calculate a score.” Appeal Br. 15. However, we agree with the Examiner that this argument does not address the combination of art cited by the Examiner. *See* Final Action 33–41; Answer 15–16. Thus, we also find no error in the Examiner's obviousness rejection of claim 14 or claims 15–17, argued on the same basis (Appeal Br. 15).

DECISION

We reverse the Examiner's rejection of claims 1–7 and 10–20 under 35 U.S.C. § 101.

We affirm the Examiner's rejection of claims 1–7 and 10–20 under 35 U.S.C. § 103.

Because we have affirmed at least one ground of rejection for each claim on appeal, we affirm the Examiner's decision rejecting the claims. 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED