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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/287,000	05/24/2014	Ankit Jain	QTR-000110	3150
64128	7590	07/03/2018	EXAMINER	
MICHAEL A DESANCTIS HAMILTON DESANCTIS & CHA LLP 12640 W. Cedar Drive, Suite 1 LAKEWOOD, CO 80228			MACASIANO, MARILYN G	
			ART UNIT	PAPER NUMBER
			3688	
			NOTIFICATION DATE	DELIVERY MODE
			07/03/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ANKIT JAIN

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Appeal 2017-003834  
Application 14/287,000  
Technology Center 3600

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Before DAVID M. KOHUT, JENNIFER L. MCKEOWN, and  
JOYCE CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–6 and 9–22, which are all of the claims pending in this application.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We enter a new ground of rejection under 37 C.F.R. § 41.50(b).

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<sup>1</sup> According to Appellant's, the real party in interest is Quetta, Inc. Br. 4.

<sup>2</sup> Claims 7 and 8 have been canceled. Final Act. 2.

## INVENTION

Appellant's invention relates to a mobile user, activity and application profiling. Abstract. Claim 1 is illustrative and reads as follows:

1. A method comprising:

proactively monitoring and collecting, by an activity monitoring module running on a mobile device, activity stream data, wherein the activity stream data includes information regarding context and usage of one or more applications installed on the mobile device by identifying at various points in time one or more of (i) applications, application processes or tasks currently running on the mobile device and (ii) a current state associated with the applications, the application processes or the tasks; and

providing, by the activity monitoring module, the activity stream data to a central server that collects activity stream data from a plurality of mobile devices, including the mobile device, and processes the collected activity stream data in conjunction with auxiliary data to create derived mobile user activity profiles for users of the plurality of mobile devices, wherein the auxiliary data includes one or more of (i) information characterizing a type or nature of a plurality of mobile applications and (ii) information characterizing a type or nature of a particular location.

## REJECTIONS<sup>3</sup>

Claims 1–6, 9–12, and 17–19, 21, and 22 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Rathod (US 2011/0276396 A1, published Nov. 10, 2011) and Lau et al. (US 2013/0102283 A1, published Apr. 25, 2013) (“Lau”).

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<sup>3</sup> In the Answer, the Examiner withdrew the rejections of claims 1–6 and 9–22 under 35 U.S.C. §§ 112(a) and 112(b). Ans. 20; *see also* Final Act. 3.

Claims 13–16 and 20 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Rathod, Lau, and Beatty et al. (US 2012/0166267 A1, published June 28, 2012) (“Beatty”).

*Rejection of Claims 1–6 and 9–22 under 35 U.S.C. § 103*

Because claims 1–6 and 9–22 are directed to patent-ineligible subject matter (see New Ground of Rejection below), we do not reach the prior art rejections of those claims. See *In re Comiskey*, 554 F.3d 967, 973 (Fed. Cir. 2009) (declining to reach the prior art rejection when claims are barred at the threshold by § 101); *Ex parte Gutta*, 93 USPQ2d 1025, 1036 (BPAI 2009) (precedential) (same).

NEW GROUND OF REJECTION

Under the provisions of 37 C.F.R. § 41.50(b), we enter the following new ground of rejection:

Claims 1–6 and 9–22 are rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter because the claims are directed to an abstract idea without significantly more.

Under 35 U.S.C. § 101, 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 an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. See, e.g., *Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1300 (2012), “for distinguishing patents

that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those 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” (*id.*), for example, to an abstract idea. If the claims are directed to one of the patent-ineligible concepts, the inquiry proceeds to the second step where the elements of the claims are considered “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.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297).

Applying the framework set out in *Alice*, in the first step of the analysis, we conclude claim 1 is directed to a patent-ineligible abstract idea, namely, collecting and processing information. The “proactively monitoring and collecting,” and “providing” steps of claim 1 are similar to the steps that the Federal Circuit determined were patent ineligible in *Content Extraction & Transmission v. Wells Fargo Bank*, 776 F.3d 1343 (Fed. Cir. 2014), and more recently, in *Electric Power Grp. LLC v. Alstom*, 830 F.3d 1350 (Fed. Cir. 2016).

In *Content Extraction*, the Federal Circuit considered the patent eligibility of a method claim for “processing information from a diversity of types of hard copy documents.” *Content Extraction*, 116 F.3d at 1345. Applying step one of the *Alice* framework, the Federal Circuit determined that the claim was “drawn to the abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory”—concepts that the court noted were “undisputedly well-known.” *Id.* at 1347.

In *Electric Power*, the method claims at issue were directed to performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results. *Elec. Power Grp.*, 830 F.3d at 1351-52. There, the Federal Circuit held that the claims were directed to an abstract idea because “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354.

Thus, in view of *Content Extraction* and *Electric Power*, here, collecting and processing information is an abstract idea.

In the second step of the analysis, we consider whether additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. The recited elements of “an activity monitoring module running on a mobile device,” “a central server,” and “auxiliary data” are generic and well-known. For example, Appellant’s Specification describes the recited “activity monitoring module running on a mobile device” generically as an application running on a mobile device and, more particularly, as “a process that may run in the background.” Spec. ¶¶ 46–48. The Specification describes the recited “central server” generically and in functional terms. *See* Spec. ¶¶ 27, 29, 62–66. The Specification also describes that claim steps may be performed by “a general-purpose or special-purpose [computer] programmed with instructions.” Spec. ¶ 113. The recited “auxiliary data” is mere information, which does not add “significantly more” to the abstract idea of collecting and processing information. *See* Spec. ¶ 96. Moreover, the particular function of collecting

data from a plurality of devices is known in the art (*see, e.g.*, Lau ¶¶ 98, 104; Rathod ¶ 274) and amounts to extrasolution activity.

Thus, claim 1 amounts “to ‘nothing significantly more’ than an instruction to apply the abstract idea . . . using some unspecified, generic computer” and in which “each step does no more than require a generic computer to perform generic computer functions.” *Alice*, 134 S. Ct. at 2359–60. Our conclusions with regard to claim 1 apply equally to claims 2–6 and 9–22.

Because we conclude each of Appellant’s claims 1–6 and 9–22 is directed to a patent-ineligible abstract concept, and the claims considered individually and as an ordered combination do not recite additional elements that transform the nature of the claim into a patent-eligible application, we conclude the claims on appeal do not encompass something “significantly more” under the second step of the *Alice* analysis.

Accordingly, we enter a new ground of rejection for claims 1–6 and 9–22 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

#### DECISION

We enter a new ground of rejection, rejecting claims 1–6 and 9–22 under 35 U.S.C. § 101.

#### TIME PERIOD FOR RESPONSE

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

37 C.F.R. § 41.50(b)