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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VENKATA S.J.R. BHAMIDIPATI,
ANIL KUMAR GUPTA, and ZHIFENG DENG

Appeal 2017-003841
Application 14/788,554
Technology Center 3600

Before ST. JOHN COURTENAY III, JENNIFER S. BISK, and
JOYCE CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–7, 9–15, and 17–20, which are all of the claims pending in this application.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is LinkedIn Corporation. App. Br. 2.

² Claims 8 and 16 have been canceled. *See* Amended Claims, filed Apr. 22, 2016.

INVENTION

Appellants' invention relates to automatic approval of advertisements for a social networking system. Abstract. Claim 1 is illustrative and reads as follows:

1. A social networking system comprising:
 - a computer processor and a computer database configured to:
 - receive an advertisement from a user for posting on the social networking system;
 - verify that the advertisement meets a first set of criteria;
 - in response to verifying that the advertisement meets the first set of criteria, receive a submission of the advertisement from the user for further processing;
 - verify that the advertisement meets a second set of criteria; and
 - in response to verifying that the advertisement meets the second set of criteria, immediately approve the advertisement for display on the social networking system;
 - wherein the second set of criteria comprises a reputation of the user;
 - wherein the user has contracted to pay a maximum amount for the advertisement based on a contractual number of clicks on the advertisement;
 - and wherein a determination of the reputation of the user comprises a comparison of the contractual number of clicks on the advertisement and an actual number of clicks on the advertisement, such that the reputation of the user is affected when the actual number of clicks on the advertisement exceeds the contractual number of clicks on the advertisement.

REJECTIONS³

Claims 1–7, 9–15, and 17–20 stand rejected under 35 U.S.C. § 101

³ In the Answer, the Examiner withdrew the rejection of claims 1–7, 9–15, and 17–20 under 35 U.S.C. § 112(a), as failing to comply with the written description requirement. Ans. 2; *see also* Final Act. 3–5.

because the claimed invention is directed to a judicial exception without significantly more. Final Act. 2–3.

Claims 1–7, 9–15, and 17–20 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Badros et al. (US 2006/00149623 A1, published July 6, 2006) (“Badros”), Zhou et al. (US 2012/0197711 A1, published Aug. 2, 2012) (“Zhou”), and Mahadevan et al. (US 2015/0269633 A1, published Sept. 24, 2015) (“Mahadevan”). Final Act. 5–9.

ANALYSIS

We have reviewed the rejections of claims 1–7, 9–15, and 17–20 in light of Appellants’ arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments Appellants could have made, but chose not to make, in the Briefs are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants’ arguments are not persuasive of error. We agree with and adopt as our own the Examiner’s findings of facts and conclusions as set forth in the Answer and in the Action from which this appeal was taken. We provide the following explanation for emphasis.

Rejection of Claims 1–7, 9–15, and 17–20 under 35 U.S.C. § 101

Appellants contend the Examiner erred in concluding the claims are directed to an abstract idea without significantly more.⁴ App. Br. 10–11.

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-

⁴ Appellants argue claims 1–7, 9–15, and 17–20 as a group. App. Br. 10. We select independent claim 1 as representative of the group. *See* 37 C.F.R. § 41.37(c)(1)(iv).

step framework, described in *Mayo* and *Alice*. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 76–77 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This is a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* (internal quotations and citation omitted).

Claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

In step one of the *Alice* analysis, the Examiner concluded claim 1 is directed to verifying whether an advertisement meets a criteria for posting, which is similar to the abstract concepts of organizing and comparing data (citing *Cyberfone*) and comparing new and stored information (citing *SmartGene*). Final Act. 2–3; *Cyberfone Sys., LLC v. CNN Interactive*

Group, Inc., 558 F. App'x. 988, 992 (Fed. Cir. 2014) (nonprecedential); *SmartGene Inc. v. Adv. Bio. Labs. SA*, 555 F. App'x 950 (Fed. Cir. 2014) (nonprecedential).

Appellants first contend the Examiner erred because “the number of clicks on an advertisement cannot be determined mentally in a human mind.” App. Br. 12–13. Appellants argue the number of clicks can only be determined using computer hardware. *Id.* at 13.

We are not persuaded of error. The plain language of claim 1 does not recite or otherwise require a determination of the number of clicks on an advertisement, and Appellants have not persuaded us it does.

Appellants next argue *Cyberfone* is “inapposite and not on point.” App. Br. 13.

We are not persuaded. In *Cyberfone*, the Federal Circuit held that “using categories to organize, store, and transmit information is well-established,” and “the well-known concept of categorical data storage, the idea of collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea that is not patent-eligible.” *Cyberfone*, 558 F. App'x. at 992. Here, as in *Cyberfone*, information is “received” (collected) and “verified” and “approved” (classified or organized).

We also discern no error in the Examiner’s reliance on *SmartGene*. In *SmartGene*, the Federal Circuit concluded claims were patent ineligible because they did “no more than call on a ‘computing device,’ with basic functionality for comparing stored and input data and rules, to do what doctors do routinely.” *SmartGene*, 555 F. App'x at 954. In the instant case, the recited “advertisement” is nothing more than data used in an algorithm

process that uses a central system (i.e., “computer processor”) to verify and approve the data using mathematical comparisons and rule-based processes. The claims at issue in *SmartGene* relied upon “expert rules” for “‘evaluating and selecting’ from a stored ‘plurality of different therapeutic treatment regimens.’” *SmartGene*, 555 F. App’x at 955. The “expert rules” in *SmartGene* are analogous to the “criteria” used to verify the advertisement and the recited limitation “the reputation of the user is affected when the actual number of clicks on the advertisement exceeds the contractual number of clicks on the advertisement.”

For these reasons, we are not persuaded the Examiner erred in concluding claim 1 is directed to an abstract idea.

Turning to step two of the *Alice* analysis, we are, likewise, not persuaded by Appellants’ argument that claim 1 is necessarily rooted in computer technology in order to overcome an Internet-centric problem specifically arising in the realm of computer technology. *See App. Br.* 11–12 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)). Appellants argue the claimed subject matter addresses a problem by examining the contractual number of clicks and the actual number of clicks, and taking the extra step of tying that comparison to the reputation of the user. *Id.* at 12. Appellants argue “[a]n economic loss on a website” is “a business challenge that is particular to the Internet.” *Id.*

In *DDR*, the Court noted that a claim may amount to more than any abstract idea recited in the claims when it addresses a business challenge, where that challenge is particular to a specific technological environment, such as the Internet. 773 F.3d at 1257. Here, claim 1 addresses the business problem of advertisements receiving other than a contractual number of

clicks. This is not a technical problem. The solution does not involve the improvement of the computer processor or the computer database.

Verifying that advertisements meet certain criteria and approving such advertising for display, including determining a reputation score, is not a challenge particular to the Internet, but is instead “merely the routine or conventional use of the Internet.” *DDR Holdings*, 773 F.3d at 1259. Thus, Appellants’ claim 1 does not attempt to solve a challenge particular to the Internet.

Claim 1 recites the abstract idea of verifying whether an advertisement meets criteria for posting. Final Act. 2. The abstract idea includes the steps of receiving an advertisement, verifying the advertisement meets sets of criteria, and approving the advertisement. *Id.* Claim 1 additionally recites in generic terms a “computer processor” and a “computer database,” which are not sufficient to transform the nature of the claim into a patent-eligible application of the abstract idea. *See Alice*, 134 S. Ct. at 2355; *see also* Spec. ¶¶ 20, 53–60 (describing database 16 and processor 902 generically and describing that a hardware module may include software encompassed within a general-purpose processor).

Accordingly, we sustain the Examiner’s § 101 rejection of independent claim 1, as well as the Examiner’s § 101 rejection of grouped claims 2–7, 9–15, and 17–20, not argued separately. *See* App. Br. 10–11.

Rejection of Claims 1–7, 9–15, and 17–20 under 35 U.S.C. § 103

Appellants contend the Examiner erred because neither Zhou nor Mahadevan teaches or suggests the limitations “the user has contracted to pay a maximum amount for the advertisement based on a contractual

number of clicks on the advertisement” and “a determination of the reputation of the user comprises a comparison of the contractual number of clicks on the advertisement and an actual number of clicks on the advertisement, such that the reputation of the user is affected when the actual number of clicks on the advertisement exceeds the contractual number of clicks on the advertisement,” recited in claim 1.⁵ App. Br. 15. In particular, Appellant argues the cited portions of Zhou and Mahadevan are not “a disclosure of the claimed subject matter of affecting a reputation of a user based on the actual number of clicks on an advertisement exceeding the contractual amount of clicks for the advertisement.” *Id.*

Appellants attack Zhou and Mahadevan individually, even though the Examiner relied on the combination of Badros, Zhou, and Mahadevan in rejecting claim 1. *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)) (“The test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art.”).

Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Here, the Examiner found Badros teaches that a trust score for each advertiser can be used for influencing the decision of the auto-check, and the given trust score is based on the performance and approvals of past advertisement. Final Act. 6 (citing Badros ¶ 68). The Examiner found an

⁵ Appellants argue claims 1–7, 9–15, and 17–20 as a group. App. Br. 15. We select independent claim 1 as representative of the group. *See* 37 C.F.R. § 41.37(c)(1)(iv).

artisan of ordinary skill would have been motivated to modify the teachings of Badros with those of Zhou and Mahadevan, and provided reasoning with rational underpinning for doing so. *Id.* at 6–7. Appellants’ arguments do not address the Examiner’s findings with regard to Badros, and thus Appellants have not persuasively addressed the rejection actually made by the Examiner.

Moreover, Appellants argue that the references do not “disclose” the disputed claim language. *See* App. Br. 15–16. The test for obviousness, however, is not whether the claimed invention is expressly taught or suggested in any one or all of the references, but whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the combined teachings of those references. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Appellants have not persuaded us that that claimed subject matter would not have been obvious in light of the cited teachings.

For these reasons, we are not persuaded that the Examiner erred in finding that the combination of Badros, Zhou, and Mahadevan teaches or suggests the disputed limitations of claim 1.

Accordingly, we sustain the Examiner’s § 103 rejection of representative claim 1, as well as the Examiner’s § 103 rejection of grouped claims 2–7, 9–15, and 17–20. *See* App. Br. 15.

Appeal 2017-003841
Application 14/788,554

DECISION

We affirm the decision of the Examiner rejecting claims 1–7, 9–15, and 17–20.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED