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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROELOF VAN ZWOL and VANESSA MURDOCK

Appeal 2017-004360
Application 12/898,661
Technology Center 3600

Before ERIC S. FRAHM, JOHN P. PINKERTON, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–18, which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Excalibur IP, LLC as the real party in interest. App. Br. 5.

STATEMENT OF THE CASE

Introduction

Appellants generally describe the disclosed and claimed invention as “[a] method or system for employing user credibility in electronic media advertising.” Abstract; Spec. ¶ 2.²

Claims 1, 7, 12, 15, and 18 are independent claims. Claim 1 is representative and reproduced below:

1. A method, comprising:

processing, by a server comprising one or more processors, one or more binary digital signals received via a node of a network, the one or more binary digital signals comprising a description of media content by a particular user for an item of content;

determining, by the server, one or more binary digital signals comprising user credibility signal sample values for the particular user and indicating a difference between:

one or more first signal sample values, determined for the particular user based at least partially on the one or more binary digital signals comprising the description of media content, and

a target value based, at least in part, on additional signal sample values provided by one or more other users,

wherein at least one of the user credibility signal sample values is determined based at least in part on one or more characteristics independent of a social influence of the particular user, and at least one of the characteristics comprises

² Our Decision refers to the Final Office Action mailed Nov. 19, 2015 (“Final Act.”); Appellants’ Appeal Brief filed June 24, 2016 (“App. Br.”) and Reply Brief filed Jan. 17, 2017 (“Reply Br.”); the Examiner’s Answer mailed Nov. 15, 2016 (“Ans.”); and the original Specification filed Oct. 5, 2010 (“Spec.”).

a description of media content by the particular user for a particular media or content item;

generating one or more binary digital signals comprising an association for the particular user between characteristics of one or more electronic media advertisements and cost, by the one or more processors based, at least in part, on the user credibility signal sample values; and

storing one or more binary digital signals comprising the association in a memory.

App. Br. 65–66 (Claims App’x).³

Rejections on Appeal

Claims 1–18 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter.

Claims 1–18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ghosh et al. (US 2010/0145777 A1; published June 10, 2010) (“Ghosh”) and Tishkevich (US 2012/0179552 A1; published July 12, 2012).

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments in the Briefs. For the reasons discussed *infra*, we are not persuaded by Appellants’ arguments that the Examiner erred in rejecting claims 1–18 under 35 U.S.C. § 101, but we are persuaded the Examiner erred in rejecting claims 1–18 under 35 U.S.C. § 103(a).

³ We note that Appellants failed to number the pages of the Appeal Brief. For purposes of this decision, we treat the cover page of the Appeal Brief as page number 1 and the remaining pages as being numbered consecutively thereafter.

Rejection Under § 101

Applicable Law

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: “Laws 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.*, 566 U.S. 66, 75–77 (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 the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. The “directed to” inquiry asks not whether “the claims *involve* a patent-ineligible concept,” but instead whether, “considered in light of the specification, . . . ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). In that regard, we determine whether the claims “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and

machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

If, at the first stage of the *Alice* analysis, we conclude that the claim is not directed to a patent-ineligible concept, it is considered patent eligible under § 101 and the inquiry ends. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016).

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider 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.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to “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.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea “‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

Appellants' Arguments⁴

Appellants contend the Examiner failed to make a prima facie case of unpatentability under 35 U.S.C. § 101.⁵ App. Br. 17. In particular, Appellants argue that the claims, viewed as a whole, are not directed to an abstract idea and meet the requirements of step 2A of the subject matter eligibility test. *Id.* at 28–40; Reply Br. 12–23. Appellants assert that *Enfish* clarified that “software is patent-eligible, such as a claim directed to a solution to a problem in the software arts,” and that five cases decided after *Alice* have held claims directed to technology implemented via software to be patent-eligible: *DDR*,⁶ *Enfish*, *BASCOM*,⁷ *McRO*, and *Amdocs*.⁸ App. Br. 30 (emphasis omitted); Reply Br. 12. Appellants state “[t]he Examiner, however, appears to disagree.” Reply Br. 12 (emphasis omitted). Appellants argue that, contrary to guidance in *Enfish*, the Examiner described claim 1 in the Answer “at a high level of abstraction, namely, as ‘providing content/advertising to a user,’” and “the Examiner has provided no reasoning to support the proposition that the subject matter claimed qualifies as a judicial exception.” Reply Br. 13–14. According to Appellants, claim 1

⁴ Appellants argue claims 1–18 as a group. *See* App. Br. 15–44; Reply Br. 4–28. We consider method claim 1 to be representative of the claimed subject matter on appeal and, therefore, we decide the § 101 rejection of claims 1–18 on the basis of representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

⁵ Appellants argue, and we agree, that each of the claims recites “a statutory category of invention” under 35 U.S.C. § 101. App. Br. 16–17, 27–28.

⁶ *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)

⁷ *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)

⁸ *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016).

provides an improvement over existing technology because user credibility sample values are determined largely independent of social influence of the particular user. App. Br. 34, 36–40; Reply Br. 15–18. Appellants also argue that there is no concern here with respect to pre-emption because “Appellant[s] claim[] a particular application for obtaining user credibility signal sample values for a particular user, based, at least in part, on one or more characteristics independent of a social influence of the particular user.” Reply Br. 21–22; *see also* App. Br. 32 (“here, claim 1 does not . . . seek to pre-empt use of decision rules”). According to Appellants, claim 1 here is like the claim in *Diehr*,⁹ which was held to be directed to patent-eligible subject matter. App. Br. 34. Appellants further argue that, viewed as a whole, the claims (a) incorporate features of rules and (b) represent an improvement over existing technology. Reply Br. 23.

Appellants also contend that the claims recite additional elements that amount to significantly more than the judicial exception and, therefore, the claims meet the requirements of step 2B of the subject matter eligibility test. App. Br. 40–42; Reply Br. 23–27. According to Appellants, the Examiner does not appear to consider step 2B. Reply Br. 23. Appellants argue that, as explained previously, “the claims represent improvements over existing technology and, thus, the claims are not merely well known, routine or conventional.” App. Br. 40 (emphasis omitted); Reply Br. 24. In that regard, Appellants argue the claims here as similar to those in *BASCOM* in that they represent improvements over existing technology instead of “merely reciting well-known, routine, or conventional aspects.” Reply Br.

⁹ *Diamond v. Diehr*, 450 U.S. 175 (1981).

25–26. Appellants further argue that, as in *Amdocs*, the claims here recite an inventive concept and are not so broad to cause pre-emption concerns. *Id.* at 26–27. Appellants also argue that “the calculations, here, could not *feasibly* be performed in the human mind” as there are “too many possibilities and calculations for a human to consider at one time.” App. Br. 41–42; Reply Br. 27.

Prima Facie Case

Before substantively analyzing claim 1 under the two-step *Alice* test, we address Appellants’ contention that the Examiner failed to establish a prima facie case of subject matter ineligibility under 35 U.S.C. § 101. *See* App. Br. 17. The Examiner is required to provide Appellants reasonable notice as to the basis of the § 101 rejection. The notice requirement is set forth by 35 U.S.C. § 132:

[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant ... [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

See In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

Here, the Examiner stated the claims are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Act. 2. The Examiner also applied the two-part *Alice* test. *Id.* at 2–4. Regarding step-one of *Alice*, the Examiner finds that, based on “all of the relevant factors with respect

to the claim as a whole,” claims 1–18 are directed to “the abstract idea of targeted advertising on websites.” *Id.* at 3. The rationale for this determination was explained by the Examiner as follows:

“[a]dvertising and targeted advertising on websites, auctioning of these ads, and providing feedback to make the ads better are fundamental economic practices and thus, the claims include an abstract idea.” *Id.* Similarly, in the Answer, the Examiner finds that “[c]laims 1–18 are directed to sending and receiving data to select and send targeted advertising” and “claims 1–18 as a whole are directed to providing content/advertising to a user.” Ans. 5–6.

Regarding step-two of *Alice*, the Examiner made the following findings:

The Examiner has considered the individual elements of the claim and the claim as a whole, and notes that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claims do not include an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment. Note that the limitations in the instant claims are done by the generically recited server and computing platform, that is essentially any computing system as seen in the applicant’s specification in at least paragraphs 0018 and 0025-0028. The limitations are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.

Id. at 3–4; *see also* Ans. 6–8.

Based on the above reasons and findings of the Examiner, we determine the Examiner provides a reasonable explanation of why the claims are directed to an abstract idea and do not include additional elements to amount to significantly more than the abstract idea. Thus, the Examiner satisfied the notice requirement of 35 U.S.C. § 132. Furthermore, based on the Examiner's above rationale and findings, we are not persuaded by Appellants' arguments that the Examiner provided "no reasoning" for finding that the subject matter claimed is directed to an abstract idea (*see* Reply Br. 13–14) and "does not appear to consider step 2B" (*see* Reply Br. 23).

Step One of *Alice*

Considering the focus of claim 1 as a whole, in view of Appellants' Specification, we agree with the Examiner that claim 1 is directed to an abstract idea—targeted advertising on websites. Final Act. 3; Ans. 6. In particular, claim 1 recites: (1) processing digital signals "comprising a description of media content by a particular user;" (2) determining user credibility signal sample values for the particular user based on "characteristics independent of a social influence of the particular user, and at least one of the characteristics comprises a description of media content by the particular user;" (3) determining a difference between (a) signal sample values for the particular user based on signals comprising the description of media content and (b) a target value based on signal sample values provided by one or more other users; (4) "generating . . . signals comprising an association for the particular user between characteristics of one or more electronic media advertisements and cost . . . based, at least in

part, on the user credibility signal sample value;” and (5) storing signals comprising the association. App. Br. 65 (Claims App’x).

Appellants’ Specification explains that the claimed electronic media or content item “may comprise a media advertisement,” which may be associated with field of use signal information, which “may comprise cost information.” Spec. ¶¶ 37, 39. The Specification also explains that “[a]dvertisers may direct particular electronic media advertisements to particular categories of users defined, at least in part, by associated field of use signal information.” *Id.* ¶ 37. The Specification further explains that “electronic media advertisements may be associated with cost based at least in part on user credibility signal sample values” and that media advertisements characteristics “may be filtered . . . based at least in part on . . . cost or said associated characteristics.” *Id.* ¶ 54.

Courts have determined that similar concepts to claim 1 were directed to abstract ideas. *See Morsa v. Facebook, Inc.*, 77 F. Supp. 3d 1007, 1013 (C.D. Cal. 2014), *aff’d*, 622 F. App’x 915 (Fed. Cir. 2015) (concluding that claims directed to “targeting advertisements to certain consumers” were no more than an abstract idea). As noted by the court in *Morsa*, “targeted advertising is [a well-known] concept, insofar as matching consumers with a given product or service ‘has been practiced as long as markets have been in operation.’” *Morsa*, 77 F. Supp. 3d at 1014 (quoting *Tuxis Techs., LLC v. Amazon.com, Inc.*, 2014 WL 4382446, at *5 (D. Del. 2014)). In other words, “[t]he concept of gathering information about one’s intended market and attempting to customize the information then provided is as old as the saying, ‘know your audience.’” *Id.* at 1013 (quoting *OpenTV, Inc. v. Netflix Inc.*, 76 F. Supp. 3d 886, 893 (N.D. Cal. 2014)).

In addition, the Federal Circuit has concluded that similar concepts were directed to abstract ideas. *See Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (“tailoring of content based on information about the user--such as where the user lives or what time of day the user views the content--is an abstract idea that is as old as providing different newspaper inserts for different neighborhoods.”) (citing *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015)); *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 712, 714-15 (Fed. Cir. 2014) (concluding claims reciting steps receiving media content, associating the content with an advertisement, providing the content for sale on the Internet while restricting public access to the content, providing the content to a consumer without charge in exchange for viewing an advertisement, and allowing access to the content after viewing or interacting with the advertisement were directed to the abstract idea of “showing an advertisement before delivering free content”).

We are not persuaded by Appellants’ argument that, although 5 cases decided after *Alice* held claims directed to technology implemented via software to be patent-eligible, the Examiner “appears to disagree” that software is patent-eligible. Reply Br. 12. In that regard, the Examiner specifically states that “[t]he Examiner agrees that Software may be patent eligible subject matter, but respectfully disagrees that the instant invention is patent eligible subject matter” based on the analysis in the Answer and previously in the Final Office Action. Ans. 9. We also are not persuaded by Appellants’ argument that the Examiner described claim 1 at a high level of abstraction because the Examiner notes that “[t]he current and previous

analyses examined ‘the claims as a whole’, so all the limitations and claims were taken into consideration individually and in combination.” *Id.*

Although Appellants argue that claim 1 provides an improvement over existing technology because user credibility sample values are determined largely independent of social influence of the particular user (*see* App. Br. 34, 36–40; Reply Br. 15–18, 23), this argument is not convincing because it is conclusory and unsupported by the claim language. *See Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (admonishing that “the important inquiry for a § 101 analysis is to look to the claim”; “the complexity of the implementing software or the level of detail in the specification does not transform a claim reciting only an abstract concept into a patent-eligible system or method”). Nor have Appellants identified any portion of the Specification, or provided any evidence or technical reasoning, demonstrating that claim 1 achieves a technical advance or improvement to computer functionality. Rather than a technological advance, we determine claim 1 is directed to a business solution to improve the abstract idea of targeted advertising. In addition, Appellants’ citation to *McRO* and argument that the claims are not abstract because they “incorporate features of rules” (*see* Reply Br. 22–23) is not persuasive. In *McRO*, the court held the claims were patent-eligible because the claims recited specific computer-implemented rules that allowed a computer to produce accurate and realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animators. *See McRO*, 837 F.3d at 1313. Here, claim 1 fails to recite technical details or rules that describe how the claimed method realizes an operational improvement via the claimed functionality.

Contrary to Appellants' arguments that the claims are similar to those in *Enfish* (see Reply Br. 20) and *Amdocs* (see *id.* at 26), Appellants have not demonstrated that the claims "improve the way a computer stores and retrieves data in memory," as the claims in *Enfish* did via a "self-referential table for a computer database." See *Enfish*, 822 F.3d at 1336, 1339.

Appellants have also not demonstrated that the claims provide an "unconventional technological solution . . . to a technological problem" that "improve[s] the performance of the system itself," as explained in *Amdocs*, 841 F.3d at 1300, 1302.

We also are not persuaded by Appellants' arguments that there is no concern here with respect to pre-emption. App. Br. 32; Reply Br. 19, 21–22, 26–27. "While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility. . . . Where a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); see also *OIP Techs. Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract").

Appellants' argument that claim 1 is like the claim in *Diehr*, which was "otherwise statutory," is also not persuasive. App. Br. 34. In *Diehr*, the court determined the claims-at-issue were not directed to an abstract idea (i.e., a mathematical formula), but instead were directed to a physical process of curing synthetic rubber that employed a mathematical formula.

See Diehr, 450 U.S. at 187. In contrast, there is no physical process recited in claim 1.

Step Two of *Alice*

Regarding step two of the *Alice* analysis, the Examiner finds that the elements of the claims, considered individually and as an ordered combination, do not provide “significantly more” than the abstract idea. *See* Final Act. 3–4; *see also* Ans. 6–8. In particular, the Examiner finds that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claims do not include an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.

Final Act. 3. The Examiner also finds that the claim limitations are performed by “the generically recited server and computing platform, which is essentially any computing system,” and “are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.” *Id.* at 3–4 (citing Spec. ¶¶ 18, 25); *see also* Ans. 7 (finding that paragraphs 20, 27–33, and 90 of the Specification “detail any combination of a generic computer system program to perform the method”). For the reasons stated by the Examiner, we agree with the Examiner’s findings and conclusions.

We are not persuaded by Appellants’ arguments that the Examiner erred. First, we are not persuaded by Appellants’ argument that the claims amount to significantly more than the judicial exception because the claims

represent “improvements over existing technology” and, thus, are not merely well-known, routine or conventional. App. Br. 40–42; Reply Br. 23–27. Appellants have failed to identify any portion of the Specification, or provided any evidence or technical reasoning, persuasively demonstrating that claim 1 achieves a technical advance or improvement to computer functionality. Further, as discussed *supra*, the argued improvement of determining user credibility signal values based on characteristics “independent of a social influence of the particular user” is merely an improvement of the underlying abstract idea of targeted advertising and does not constitute an improvement to the functionality of the underlying computer system or computer technology. In that regard, claim 1 does not “focus on a specific means or method that improves the relevant technology,” but is “directed to a result or effect that itself is the abstract idea and merely invoke[s] generic processes and machinery.” *McRO*, 837 F.3d at 1314. This is not enough to transform an abstract idea into patent-eligible subject matter. *See, e.g., Alice*, 134 S. Ct. at 2360 (explaining that claims that “amount to ‘nothing significantly more’ than an instruction to apply the abstract idea . . . using some unspecified, generic computer” “is not ‘enough’ to transform an abstract idea into a patent-eligible invention” (quoting *Mayo*, 566 U.S. at 77, 79)); *Intellectual Ventures*, 850 F.3d at 1342 (“[T]he claim language here provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it. Our law demands more.”).

Second, Appellants’ argument that the claims here are similar to those in *BASCOM* in that they represent improvements over existing technology instead of reciting well-known, routine, or conventional aspects is also not

persuasive. *See* Reply Br. 25–26. The court in *BASCOM* noted that an inventive concept can be found in a non-conventional and non-generic arrangement of known, conventional pieces. *See BASCOM*, 827 F.3d at 1350. However, the claims here are distinguishable from those in *Bascom*. In *Bascom*, the system claims were directed to a “content filtering system for filtering content retrieved from an Internet computer network,” which the court held were directed to an abstract idea. *Id.* at 1348–49. The court further held the claims included an inventive concept in the ordered combination of system components, including a local client computer and a remote ISP server connected to the client computer and Internet computer network providing for “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *Id.* at 1350. Appellants have failed to establish that claim 1 includes a similar or analogous arrangement or “ordered combination” of components and instead make only the conclusory statement that the claims at issue here “represent improvements over existing technology.” *Id.* at 26.

Thus, we see nothing in the limitations of claim 1, considered both “individually and ‘as an ordered combination,’” that transforms the claimed abstract idea into patent-eligible subject matter.

Accordingly, we sustain the Examiner’s rejection of claim 1 under § 101. For the same reasons, we sustain the rejection of independent claims 7, 12, 15, and 18, and dependent claims 2–6, 8–11, 13, 14, 16, and 17, which are not separately argued, under § 101.

Rejection Under § 103(a)

The Examiner finds that Ghosh teaches the claim 1 limitation of “at least one of the user credibility signal sample values is determined based at least in part on one or more characteristics independent of a social influence of the particular user.” Ans. 17–18 (citing Ghosh ¶¶ 45, 47–49, 52, 55–57); Final Act. 8–9. In particular, the Examiner quotes, and relies on, the following portion of paragraph 48 of Ghosh:

In some embodiments, in an illustrative operation, each of the reputation targets of reputation attribution environment 400 can be attributed one or more reputation scores (e.g., reputation score for business data, reputation score for family data, etc.). In the illustrative operation, the reputation score for each reputation target for each category (e.g., business, family, social, religious, etc.) can be calculated according to the degree of relationship with other reputation targets and/or the number of connections with other relationship targets.

Ans. 17–18.

Appellants disagree with the Examiner’s interpretation of paragraph 48 and argue that, contrary to the Examiner’s finding, “paragraph 48 appears to explicitly state that reputation score for a reputation target is based on a social influence of a user.” App. Br. 57–58; Reply Br. 31. In particular, Appellants argue the last sentence of paragraph 48 teaches that reputation score is calculated according to “social influence” because it states that the reputation score for each representation target “can be calculated according to the degree of relationship with other reputation targets and/or the number of connections with other relationship targets.” Reply Br. 31. Thus, Appellants argue that the method recited in Ghosh is “dependent upon social

influence,” whereas the method of claim 1 is “independent of social influence.” *Id.* at 32 (emphasis omitted).

For the reasons argued by Appellants, we agree with Appellants that Ghosh does not teach or suggest the disputed limitation of claim 1. We also agree with Appellants that Tishkevich does not cure the deficiencies of Ghosh because, as Appellants argue, “Tishkevich fails to show that any user credibility signal sample values are determined or otherwise processed for any reason whatsoever.” *Id.*

Accordingly, we do not sustain the Examiner’s rejection of claim 1 under § 103(a). For the same reasons, we also do not sustain the Examiner’s rejection of independent claims 7, 12, 15, and 18, each of which recites a commensurate limitation to the disputed limitation of claim 1, as well as dependent claims 2–6, 8–11, 13, 14, 16, and 17, under § 103(a).

DECISION

We affirm the Examiner’s decision rejecting claims 1–18 under 35 U.S.C. § 101.

We reverse the Examiner’s decision rejecting claims 1–18 under 35 U.S.C. § 103(a).

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner’s decision is affirmed. *See* 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)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv)(2016).

Appeal 2017-004360
Application 12/898,661

AFFIRMED