UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/061,618	04/02/2008	Payam Zamani	353952-991003	8829

26379 7590 09/05/2018

DLA PIPER LLP (US)
2000 UNIVERSITY AVENUE
EAST PALO ALTO, CA 94303-2248

EXAMINER
VIZVARY, GERALD C

ART UNIT	PAPER NUMBER
3624	

NOTIFICATION DATE	DELIVERY MODE
09/05/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PatentDocketingUS-PaloAlto@dlapiper.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAYAM ZAMANI and SEAN FOX

Appeal 2017-004433
Application 12/061,618
Technology Center 3600

Before ALLEN R. MACDONALD, BRADLEY W. BAUMEISTER, and KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–16. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention is directed to a lead marketplace system and method with ratings system. Spec. Title. Claims 1 and 11, reproduced below with the disputed limitations in *italics*, are representative of the claimed subject matter:

1. A lead marketplace system, comprising:

a storage system that stores a plurality of leads wherein each lead is an electronic contact and transactional information that provides an opportunity to sell a good or service to a prospective customer;

a Lead Seller database, coupled to the storage system, that stores one or more selling campaigns for one or more Lead Sellers, each selling campaign containing one or more leads to be sold in the lead marketplace system;

a Lead Buyer database, coupled to the storage system, that stores one or more buying campaigns for one or more Lead Buyers, each buying campaign including one or more parameters specifying the characteristics of leads to be bought by the Lead Buyer associated with the buying campaign; and

a rating server, coupled to the storage system, that provides a quality rating for each lead stored in the storage system, wherein the quality rating for the lead reflects a quality of the lead and is based on a historical performance of the selling campaign with which the lead is associated and a set of information about the lead.

11. A method for rating a lead in a lead marketplace system based on a plurality of quality factors associated with the lead, the method comprising:

determining, by a rating unit of the lead marketplace system, for each quality factor of the plurality of quality factors associated with the lead, if each quality factor for the lead has been triggered;

determining, by a rating unit of the lead marketplace system, a weight for each quality factor that has been triggered for the lead;

calculating, by a rating unit of the lead marketplace system, a quality factor score for each triggered quality factor based on the weight for each triggered quality factor;

combining, by a rating unit of the lead marketplace system, the quality factor scores for all of the triggered quality factors; and

generating, by a rating unit of the lead marketplace system, a rating for the lead based on the combined quality factor scores.

App. Br. 14, 15–16 (Claims Appendix).

REJECTIONS

Claims 1–16 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1–16 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over the combination of Diana et al. (US 2006/0041500 A1; published Feb. 23, 2006) ("Diana") and Mitchell (US 2007/0282904 A1; published Dec. 6, 2007).

ANALYSIS

35 U.S.C. § 101 Rejections

To determine whether a claim is eligible under § 101, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept." *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). "[I]n applying the §101 exception, we must distinguish between patents that claim the 'buildin[g] block[s]' of human ingenuity and those that integrate the building blocks into something more." 134 S. Ct. at 2354–55. One must

keep in mind that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas," *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012), and "describing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Instead, "the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). "If the claims are not directed to an abstract idea [or other patent-ineligible concept], the inquiry ends. If the claims are 'directed to' an abstract idea, then the inquiry proceeds to the second step of the Alice framework." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016).

Turning to the present appeal, the Examiner determines the claims are directed to "a storage system that stores a plurality of leads wherein each lead is a contact and transactional information that provides an opportunity to sell a good or service to a prospective customer," which the Examiner determines is an abstract idea. Final Act. 6. The Examiner further determines the claims are not directed to an improvement to computer technology, but rather to a business solution that uses computers. Ans. 2.

Appellants argue the claims are similar to those in *Enfish* and are "directed to an improvement in computer technology in that the claims are directed to a lead marketplace that has the technology improvement of a ratings system that rates the leads." App. Br. 8. Appellants argue "the claims are directed to a technology improvement in the area of lead

generation and selling and improves the known systems" and "[s]pecifically, the claims recite the rating server." App. Br. 9. Appellants further argue "the claims are directed to improving an existing technological process (lead marketplace with ratings)." Reply Br. 2–3. Appellants further "disagree[] that a storage system (which is a physical element) can be an abstract idea." *Id*. In addition, Appellants argue "the examiner has described the claim at a high level of abstraction untethered from the language of the claim" because "the examiner's characterization of the claims ignored the rating server element." App. Br. 9.

We are not persuaded by Appellants' arguments and agree with the Examiner's findings and conclusions. *See* Final Act. 3–4, 6–7, Ans. 2–6. Although the claims require concrete components such as a database, storage system, and rating server, the Specification indicates that these recited physical components merely provide a generic environment in which to carry out the abstract idea of storing leads and providing a quality rating for each stored lead. The courts have determined such uses of storage to constitute an abstract idea. *See, e.g., In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 613 (Fed. Cir. 2016) (classifying and storing digital images in an organized manner is an abstract idea).

For example, the Specification states "[t]he LMP [lead market place] system 20 may further include one or more storage units, such as database tables in one implementation of the system that store data and are accessed by the various units" and "[t]he LMP system 20 may further comprise a consumer rating unit 40, such as one or more server computers that execute computer code in one implementation, that provide a rating process." Spec. 5; *see also* Spec. Fig. 1.

We disagree the claims are similar to those in *Enfish*. *See* Ans. 3. The claims do not recite any improvement to computer functionality or to the storage system, in contrast to the technological improvement of the self-referential database table claimed in *Enfish*. Rather, the present claims generically recite a storage system and database for storing data and a server that provides a quality rating by using conventional or generic technology. *See* Spec. 3, 5, Fig. 1.

The problem faced by Appellants relates to "efficiently pric[ing] and distribut[ing] Leads." Spec. 1; *see also* Spec. 3 ("[t]he lead marketplace system brings Lead Buyers . . . and Lead Sellers . . . together in a way that efficiently prices Leads so that they sell at the market-efficient price while minimizing the Lead Seller's operating costs."). The Specification does not describe a new type of storage system, database, or server. Rather, as described above, the storage system, database, and server are described as performing generic computer functions of storing data and executing computer code. *E.g.* Spec. 3, 5, Fig. 1. Therefore, the claims are directed to an abstract idea (storing leads and providing a quality rating for each stored lead) "for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1336. As such, we agree with the Examiner the claims are directed to solving a business problem, rather than a technological problem. *See* Ans. 2, 4–6.

In the second step of the *Alice* framework, we then "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, 78–79 (2012)). The Supreme

Court describes this 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.* (quotation omitted).

Appellants argue "the claims recite the storage system, the Lead Buyer Unit and Lead Seller Unit and ratings server (the machine), but that machine performs functions that are not generic unlike the *TLI Communications* case." App. Br. 9; *see also* Reply Br. 4. Specifically, Appellants argue "the ratings server that provides a quality rating for each lead stored in the storage system, wherein the quality rating for the lead reflects a quality of the lead and is based on a historical performance of the selling campaign with which the lead is associated and a set of information about the lead . . . is not a generic computer function." App. Br. 9; *see also* Reply Br. 4. Appellants further argue the claims are similar to those in *BASCOM Global Internet Services, Inc. v. AT & T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) because they

> are a particular arrangement of elements (the storage system, the Lead Seller database, the Lead Buyer database and the rating server that provides a quality rating for each lead stored in the storage system, wherein the quality rating for the lead reflects a quality of the lead and is based on a historical performance of the selling campaign with which the lead is associated and a set of information about the lead) that are a technical improvement (providing the quality ratings of each lead based historical performance of the selling campaign with which the lead is associated and a set of information about the lead) over the prior art ways of lead generation and selling.

App. Br. 10; *see also* Reply Br. 5.

We are not persuaded by Appellants' arguments and agree with the Examiner's findings and conclusions. *See* Final Act. 6–7, Ans. 2–6. Appellants have not persuasively explained why the recited functionalities are more than generic computer functions. Although Appellants point to "the ratings server that provides a quality rating for each lead stored in the storage system . . ." and assert the functionality is not a generic computer function, Appellants do not explain *why* it does not perform generic computer functions. As discussed above, the server is generically described in Appellants' Specification as "executing computer code" and claim 1 recites "*provid[ing]* a quality rating . . ." *E.g.*, *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2015) ("That a computer receives and sends information over a network—with no further specification—is not even arguably inventive."); *In re TLI Communications*, 823 F.3d at 614 (Fed. Cir. 2016) (server that receives data, extracts classification information from the received data, and stores the digital images insufficient to add an inventive concept). Moreover, the computers in *Alice* were receiving, storing, and sending information over networks connecting the intermediary to the other institutions involved, and the Court found the claimed role of the computers insufficient. 134 S. Ct. at 2359–2360

Further, we are not persuaded the claims are similar to those in *BASCOM*. App. Br. 10–11. In *BASCOM*, the claims were generally directed to filtering content. 827 F.3d at 1348. Although the Court determined the claims recited generic computer, network, and Internet components that were not inventive by themselves, the Court found the ordered combination of the limitations provided the requisite inventive concept. *Id.* at 1349–1350 ("[A]n inventive concept can be found in the

non-conventional and non-generic arrangement of known, conventional pieces"). There, the patent extensively claimed and explained how a particular arrangement of elements was "a technical improvement over prior art ways of filtering such content." *Id.* at 1350 (E.g., "According to *BASCOM*, the inventive concept harnesses this technical feature of network technology in a filtering system by associating individual accounts with their own filtering scheme and elements while locating the filtering system on an ISP server."). In *BASCOM*, there existed substantial argument and support from the Specification concerning the "inventive concept." Here, other than providing general conclusory statements, Appellants do not persuasively explain how the claims are similar to those in *BASCOM*.

Accordingly, we are not persuaded the Examiner erred in rejecting claims1–16 under 35 U.S.C. § 101.

35 U.S.C. § 103 Rejections

Issue 1: Did the Examiner err in finding the combination of Mitchell and Diana teaches or suggests

> a rating server, coupled to the storage system, that provides a quality rating for each lead stored in the storage system, wherein the quality rating for the lead reflects a quality of the lead and is based on a historical performance of the selling campaign with which the lead is associated and a set of information about the lead,

as recited in independent claim 1?

The Examiner relies on the combination of Diana and Mitchell to teach or suggest the disputed limitation. Final Act. 4–5, 8–9; Ans. 6–8. Appellants argue "Mitchell discloses an online professional referral system

that has a ratings/feedback module" that "solicits, tracks and tabulates feedback rating provided by the various members for other members relative to concluded referral auctions" and therefore "discloses that the rating occurs **after** the referral auction has been concluded" so does not teach or suggest "a rating server, coupled to the storage system, that provides **a quality rating for each lead stored in the storage system**." App. Br. 12; *see also* Reply Br. 7. Appellants further argue Mitchell does not teach or suggest "the claimed quality rating in which the quality rating for the lead reflects a quality of the lead and is based on a historical performance of the selling campaign with which the lead is associated and a set of information about the lead." *Id.*

Appellants' arguments are unpersuasive. Diana describes that "[a] quality rating database rates the quality of leads provided by different sellers." Diana Abstract. In particular, Diana describes using "automated validation/rating algorithms" to rate leads as good, bad, or maybe, "tak[ing] into account various factors such as the seller's quality history (as stored in a database, i.e. 457), the consumer's purchase history (as stored in a database) and other information such as address, phone, email and their associated probabilities of validity." Diana ¶ 87. Diana also provides means for "allowing buyers (successful bidders) to rate the quality of leads they purchased from various sellers." Diana ¶ 17; *see also* Diana Figs. 4A, 5, 6, ¶ 80. Diana provides a quality rating database that "has access to the linkage between seller identifications and lead identifications . . . as well as to the feedback information provided by the buyers." Diana ¶ 81, Fig. 4A.

Mitchell describes a referral service, including "a ratings system wherein a winner of a referral has the opportunity to rank the referring

professional based on the quality of the referral." Mitchell ¶ 18. Mitchell's ratings module "can be provided by the various members for other members relative to concluded referral auctions." Mitchell ¶ 48; *see also* Mitchell Fig. 2. "Upon receiving the feedback, the module updates the user information database as necessary." *Id.*

Appellants' arguments that Mitchell does not teach the disputed claim language because Mitchell "discloses that the rating occurs **after** the referral auction has been concluded" is not commensurate with the scope of the claim language, which does not specify when the rating occurs. Rather, the claim simply recites "a rating server . . . that provides a quality rating for each lead stored in the storage system . . ."

We are persuaded the combination of Diana and Mitchell teaches or suggests the claimed limitation. For example, Diana teaches providing a quality rating for each lead stored in the storage system (e.g., good, bad, or maybe), wherein the quality rating for the lead reflects a quality of the lead (e.g., good, bad, or maybe), and is based on a historical performance of the selling campaign with which the lead is associated and a set of information about the lead (e.g., seller's quality history, the consumer's purchase history, and other information such as address, phone, email, and information from the buyer).

Diana does not explicitly teach or suggest a rating *server*. *See* Final Act. 8. However, Mitchell teaches or suggests a rating server, coupled to the storage system (e.g., ratings module, *see* Mitchell Fig. 2), that provides a quality rating for each lead stored in the storage system (e.g., feedback ratings), wherein the quality rating for the lead reflects a quality of the lead (e.g., ranking the referring professional based on the quality of the referral)

and is based on a historical performance of the selling campaign with which the lead is associated and also based on a set of information about the lead (e.g., feedback ratings are relative to concluded referral auctions).

Accordingly, we are not persuaded the Examiner erred. Therefore, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 1, as well as dependent claims 2–10, which were not separately argued. *See* App. Br. 12.

Issue 2: Did the Examiner err in finding the combination of Mitchell and Diana teaches or suggests "determining, by a rating unit of the lead marketplace system, for each quality factor of the plurality of quality factors associated with the lead, if each quality factor for the lead has been triggered," as recited in independent claim 11?

The Examiner relies on Diana to teach or suggest the disputed limitation. Final Act. 12, Ans. 8–9. Appellants argue Diana teaches "a lead system that has a quality feedback means to rate leads" and that "an acceptability rating algorithm may have one or more factors." App. Br. 12. Appellants further argue Diana fails to teach "'determining, by a rating unit of the lead marketplace system, for each quality factor of the plurality of quality factors associated with the lead, **if each quality factor for the lead has been triggered'** [because] Diana merely discloses that various factor[s] may be used in the acceptability rating algorithm." App. Br. 12; *see also* Reply Br. 7. Appellants, therefore, argue "Diana fails to disclose or suggest this claim element." *Id.*

We disagree. As discussed above, Diana ratings are based upon various factors, including seller's quality history, the consumer's purchase

history, and other information such as address, phone, email, and information from the buyer. Diana ¶¶ 17, 87. Diana provides an example of a rating algorithm considering such factors. Diana ¶ 88. Appellants do not provide a construction for the term "triggered," as used in the claim. Nor do Appellants direct our attention to disclosure in the Specification for the term "triggered." One relevant plain meaning of "trigger" is "to initiate or precipitate (a reaction, process, or chain of events)." Webster's Universal College Dictionary 841 (1997). As Diana indicates the use of certain factors to calculate the acceptability rating if they are present (e.g., ¶¶ 87, 88), we agree with the Examiner that Diana teaches, or at least suggests, that "each quality factor for the lead has been triggered."

Accordingly, we are not persuaded the Examiner erred. Therefore, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 11, as well as dependent claims 12–16, which were not separately argued. *See* App. Br. 13.

DECISION

The Examiner's 35 U.S.C. § 101 rejection of claims 1–16 is affirmed.

The Examiner's 35 U.S.C. § 103(a) rejection of claims 1–16 is affirmed.

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