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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS F. KISTER

Appeal 2017-004488
Application 13/831,096
Technology Center 3600

Before CAROLYN D. THOMAS, HUNG H. BUI, and
JOSEPH P. LENTIVECH, *Administrative Patent Judges*.

LENTIVECH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–12 and 14–18. Claim 13 has been canceled. *See* App. Br. 12 (Claims App.). We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellant, the real party in interest is ARRIS Enterprises.
App. Br. 3.

STATEMENT OF THE CASE

Appellant's Invention

Appellant's invention generally relates to the automated transfer of a unique identifier of a consumer electronics device during a registration process for registering the consumer electronics device with an external entity. *See Spec., Abstract.* Claim 1, which is illustrative, reads as follows:

1. A method comprising

initiating, in one or more computer processors, registration of a consumer electronics device (CED) with an external entity, wherein the CED is associated with a consumer, and the CED does not have ability to complete the registration with the external entity by itself;

obtaining, using the one or more computer processors, a unique identification for the CED; and

providing, by the one or more computer processors, the unique identification to the external entity in order to complete the registration of the CED, wherein the registration includes:

registering the unique identification of the CED,
and

associating the CED with a subscriber account of the external entity, whereby the consumer is provided access as a subscriber to one or more of content and services.

References

The Examiner relies on the following prior art in rejecting the claims:

Sherman et al.	US 2009/0078760 A1	Mar. 26, 2009
Ahmed	US 2012/0169856 A1	July 5, 2012
Choi	US 8,650,097 B2	Feb. 11, 2014
Rubio	EP 2 485 459 A1	Aug. 8, 2012

Rejections

(1) Claims 1–12 and 14–18 stand rejected under 35 U.S.C. § 101 as directed to judicially-excepted subject matter under 35 U.S.C. § 101. Final Act. 2–4.

(2) Claims 1–6, 8, 10–12, 14, 15, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Sherman and Choi. Final Act. 5–12.

(3) Claims 7 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Sherman, Choi, and Rubio. Final Act. 12–13.

(4) Claims 9 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Sherman, Choi, and Ahmed. Final Act. 13–14.

ANALYSIS

Rejection under 35 U.S.C. § 101

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 134 S.Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). 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, 82–84 (2012), “for distinguishing patents that claim laws of nature,

natural phenomena, and abstract ideas from those that claim patent-eligible applications of these 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,” such as an abstract idea. The inquiry often is whether the claims are directed to “a specific means or method” for improving technology or whether they are simply directed to an abstract end-result. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1311, 1314 (Fed. Circ. 2016). If the claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the second step, where the elements of the claims are considered “individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79–80, 1297). We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

The Examiner finds the claims are directed to the abstract idea of “initiating registration with an external entity, wherein a consumer [electronics device] does not have [the] ability to complete the registration with the external entity by itself.” Final Act. 2 (underlining omitted). The Examiner further finds that the additional elements recited in the claims are not sufficient to amount to significantly more than the abstract idea. Final Act. 3–4.

Appellant argues the claims are not directed to an abstract idea

because “[t]he claims recite improvements involving **traditional areas of computer technology.**” App. Br. 5. Appellant further argues the claims “both implicitly and expressly require the use of a computing device, and cannot be performed purely mentally.” App. Br. 6; *see also* Reply Br. 2, 4.

Appellant’s arguments are not persuasive. We agree with the Examiner that the claims are directed to a patent-ineligible abstract concept of initiating registration of a consumer electronics device with an external entity. Final Act. 2. All the steps recited in Appellant’s independent claims 1 and 15, including, for example: (i) “initiating . . . registration of a consumer electronics device (CED) with an external entity”; (ii) obtaining . . . a unique identification for the CED”; (iii) providing . . . the unique identification to the external entity in order to complete the registration of the CED; (iv) “registering the unique identification of the CED”; and (v) “associating the CED with a subscriber account of the external entity” are abstract processes of collecting, storing, and analyzing information of a specific content. Information, as such, is intangible. *See Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 451 n.12 (2007). Information collection and analysis, including when limited to particular content, is within the realm of abstract ideas. *See, e.g., Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011).

Turning to the second step of the *Alice* inquiry, we find nothing in Appellant’s claims that adds anything “significantly more” to transform the abstract concept of collecting, storing, and analyzing information into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. Limiting such an

abstract concept of initiating registration of a consumer electronics device with an external entity to a general purpose computer having generic components such as “one or more computer processors” recited in Appellant’s claims 1 and 15 does not make the abstract concept patent-eligible under 35 U.S.C. § 101. As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent ineligible abstract idea into a patent-eligible invention.” *See Alice*, 134 S. Ct. at 2358 (concluding claims “simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer” not patent eligible); *see also Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (“[s]imply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible” (internal citation omitted)).

We are also not persuaded by Appellant’s arguments that the claims are similar to the claims in *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) because they are directed to computer-related technology and improve upon existing technological processes. Reply Br. 2–4. The Federal Circuit has held that “receiving transmitted data over a network and displaying it to a user merely implicates purely conventional activities that are the ‘most basic functions of a computer.’” *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (quoting *Alice*, 134 S. Ct. at 2359). Put another way, “[a]n abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea.” *BASCOM*, 827 F.3d at 1348. We agree with the Examiner that the claims neither address a technical problem nor provide a technical solution, but merely recite limitations directed to the

application of an abstract idea on a computer. “We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are insufficient to pass the test of an inventive concept in the application of an abstract idea.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (quotation omitted).

Here, the claims merely obtain a unique identification for a consumer electronics device and provide the unique identification to an external entity. As the Federal Circuit has held, “the practices of collecting, analyzing, and displaying data, with nothing more, are practices whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097–98 (Fed. Cir. 2016) (quotation omitted); *see also CyberSource*, 654 F.3d at 1370 (“mere data-gathering steps cannot make an otherwise nonstatutory claim statutory”) (quotation omitted).

Because Appellant’s claims are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection claims 11–12 and 14–18 under 35 U.S.C. § 101 as being directed to judicially-expected subject matter in light of *Alice* and its progeny.

Rejections under 35 U.S.C. § 103(a)

Appellant contends the combination of Sherman and Choi fails to teach or suggest “providing, by the one or more computer processors, the unique identification to the external entity in order to complete the registration of the CED, wherein the registration includes: registering the unique identification of the CED, and associating the CED with a subscriber

account of the external entity, whereby the consumer is provided access as a subscriber to one or more of content and services,” as recited in claim 1.

App. Br. 7. Appellant argues the disputed limitations “constitute[] a feature that is absent from the proposed combinations [of cited references].” App. Br. 7. However, Appellant does not address the Examiner’s findings and offers no explanation or reasoning as to how or *why* the cited references fail to teach or suggest the disputed limitations. Therefore, Appellant’s argument is unpersuasive. *See* 37 CFR § 41.37(c)(1)(iv) (“The arguments shall explain *why the examiner erred* as to each ground of rejection contested by [A]ppellant. . . . [A]ny arguments or authorities not included in the appeal brief will be refused consideration by the Board for purposes of the present appeal.”) (emphasis added.) Moreover, arguments not made are deemed waived. *See id*; *cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an [A]ppellant, looking for nonobvious distinctions over the prior art.”).

Accordingly, we sustain the Examiner’s rejection under 35 U.S.C. § 103(a) of claim 1 and claims 2–12 and 14–18, which are not separately argued with particularity. *See* App. Br. 7–8.

DECISION

We affirm the Examiner’s rejection of claims 1–12 and 14–18 under 35 U.S.C. § 101.

We affirm the Examiner’s rejection of claims 1–12 and 14–18 under 35 U.S.C. § 103(a).

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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