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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DWAYNE E. TOWELL, GIDEON P. BOTHA, and
ROBERT J. REESE

Appeal 2017-004897
Application 12/173,523
Technology Center 3700

Before JENNIFER D. BAHR, GEORGE R. HOSKINS, and
BRANDON J. WARNER, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Dwayne E. Towell et al. (Appellants)¹ appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 25–40 under 35 U.S.C. § 101 as being directed to a judicial exception to patent-eligible subject matter (i.e., an abstract idea) without significantly more. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The Appeal Brief identifies Pharos Resources as the real party in interest. Appeal Br. 1.

THE CLAIMED SUBJECT MATTER

Appellants' invention "relates generally to a software system that works as a client and or case management tool designed to facilitate the assistance of a student at an educational institution" and, more particularly, "provides means for members of an educational institution to efficiently interact, transmit, and gather information to proactively identify and assist a student in need." Spec. ¶ 1. Claim 25, reproduced below, is illustrative of the claimed subject matter.

25. A computer implemented method for gathering, linking, and connecting information regarding a student in a community displaying a deviation in personality not currently affecting academic performance performed by one or more processors, the method comprising:

identifying the student by a Circle of Care, the Circle of Care comprising persons with an academic, social, familial, romantic, residential, spiritual, and/or instructional relationship to the student, and at least one of said Circle of Care persons inputting and/or viewing text at category scale responses into the processor, said processor interlinking input with previously known data regarding said student and creating a student file;

accessing said data and input, said data and input capable being immediately received and reviewed by a coordinator, said coordinator having customized access to view and input the text and category scale responses regarding the student into the file, and said coordinator making a determination as to whether the student has a need that can be addressed in the community, said determination input and interlinked with the student's file;

transmitting data requests from the coordinator to the student's identified Circle of Care capable of being immediately accessed, and interlinking the requests with the student's file;

transmitting communications regarding the student to the coordinator and the Circle of Care, said communications interlinking with the students file;

transmitting transcribed communications to the student from the coordinator to investigate the student's potential need that can be addressed in the community, said transcribed communications being interlinked with the student's file;

receiving information from the student regarding the need that can be addressed in the community for review by the coordinator, said information interlinked with the student's file;

receiving information not originally input onto one of said processors, said information being transformed to data viewable on a computer, being input onto the processor and interlinked with the student's file;

synchronizing the accessibility by the coordinator and the Circle of Care in a variety of environments including the home, office, or personal setting, such that all allowed information that is interlinked is available;

retaining the data collected regarding the student in a community for the duration of the student's membership in the community;

updating the data regarding the student in the memory at least daily, interlinking all data; and

wherein the use of the one or more processors synchronizes and interlinks data available for analysis by the coordinator, thus synergistically connecting members of the Circle of Care with the coordinator and student, and allowing the coordinator to assess data of a plurality of students within the community; and

wherein interlinked data regarding the student may be accessed and searched in relation to data of another student for immediate viewing of similar deviations of personality not currently associated with academic performance, assistance rendered, and maintenance of membership within the academic community.

DISCUSSION

Section 101 of the patent law provides that one may obtain a patent for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The

Supreme Court has held that this provision includes important exceptions, notably those that prohibit one from patenting abstract ideas, laws of nature, or natural phenomena. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 216–17 (2014). Although a law of nature or an abstract idea is not patentable, the application of these concepts may be patentable. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70–72 (2012).

The Supreme Court has set forth “a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217 (citing *Mayo*, 566 U.S. at 71–72). Under that framework, we first “determine whether the claims at issue are directed to one of those patent-ineligible concepts”—i.e., a law of nature, a natural phenomenon, or an abstract idea. *Id.* If so, we secondly “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*, 566 U.S. at 77–79). The Supreme Court has described the second part of the analysis 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.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Step One: Are the Claims Directed to an Abstract Idea?

The Federal Circuit has described the first step as a determination of the “basic character of the claimed subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015) (citing *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1273–74

(Fed. Cir. 2012)). The Federal Circuit has also indicated that this step should determine whether a claimed method “recites an abstraction—an idea, having no particular concrete or tangible form.” *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *see also Alice*, 573 U.S. at 218 (“The ‘abstract ideas’ category embodies ‘the longstanding rule that “[a]n idea of itself is not patentable.”” (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (further quotations and citations omitted))).

The Examiner determines that claims 25–40 recite “a series of steps that compare[] and format information for transmission or a series of steps that . . . compare[] new and stored information and us[e] rules to identify options.” Final Act. 4. Thus, the Examiner analogizes claim 25 to other concepts that have been identified as abstract by the courts. *Id.*; *see, e.g., Cyberfone Sys., LLC v. CNN Interactive Grp.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (stating that “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”).

Appellants appear to acknowledge that the concept of “using categories to organize, store, and transmit information” is an abstract idea. *See* Appeal Br. 16. Further, Appellants concede that the software of their invention “does collect, categorize, and store data.” *Id.* at 17. However, Appellants submit that “[i]nformation is garnered from persons with a relationship with the student (Circle of Care)” and that “the formula is the examination by a human mind (the coordinator), and the mind’s action to resolve the need.” *Id.* at 16. According to Appellants, “[t]he present invention is a platform for connection between those who see need and those who can address it.” *Id.* Appellants contend that the abstract idea category

of “using categories to organize, store, and transmit information” “requires *no* user intervention.” *Id.* Appellants contend that the analysis used “to determine whether information is stored or transmitted” and whether a student is referred to the system is “*human analysis*,” and that the system cannot transmit data without a determination by the coordinator (i.e., human analysis) whether there is a need and whether that need can be addressed. *Id.* at 16–17. Thus, Appellants argue, because of the human analysis required to perform the claimed method, the claimed invention “is not an abstract idea.” *Id.* at 16–17.

Appellants’ argument is not well founded. It is well established that mental processes are abstract ideas and are not patent-eligible subject matter. *See Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (“Phenomena of nature, . . . , *mental processes*, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work” (emphasis added)); *In re Comiskey*, 554 F.3d 967, 979 (Fed. Cir. 2009) (“[M]ental processes—or processes of human thinking-standing alone are not patentable even if they have practical application.”); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”). Thus, the fact that human analysis is required to perform the claimed method does not “point . . . to patent eligibility” as Appellants contend (Appeal Br. 17). *See* Ans. 2–3 (noting that “use of a human to perform analysis” is an abstract idea, not patent-eligible subject matter).

For the above reasons, Appellants do not apprise us of error in the Examiner’s determination that claims 25–40 are directed to an abstract idea.

Step Two: Is There an Inventive Concept?

The Examiner determines that claims 25–40 include “limitations that are directed to a computer, a database[,] and a processor,” and “takes the position that these limitation[s amount to] nothing more than the implementation of the abstract idea . . . in a generic computer that is well understood and conventional.” Final Act. 5. The Examiner determines that the method of claims 25–40 is implemented “without the use of [a] particular machine[,] but rather can be implemented in a generic computer/computer component.” *Id.* The Examiner also determines that the claims do not “include any improvement to another technology or technical fields.” *Id.* at 5–6. Thus, the Examiner determines that “the limitations of claims 25–40 do not include additional elements that amount to significantly more than the judicial exception.” *Id.* at 6.

Appellants argue that their claims provide “the connection of persons without any relationship to each other for the purposes of the student” and, unlike previous methods of identification, “an interface for communication and connection between persons who would otherwise never be aware of one another.” Appeal Br. 20. Appellants point in particular to the limitations in claims 25, 26, and 32 relating to synchronizing access to the communications and information in the system by the coordinator and members of the Circle of Care and allowing “instantaneous connection of instructors within the institution.” *Id.* at 21. Appellants submit that these limitations provide “the ability to access the system from multiple machines to input data that is then accessible” by people in a variety of environments, including the home, office, or other settings. *Id.*

This argument is not persuasive. Storing information, such as communications, input by different people from different locations and making it is accessible to people at other locations are among the most basic functions of databases and computer networks, and do not constitute an inventive concept. “[G]eneric computer components such as an ‘interface,’ ‘network,’ and ‘database’” “do not satisfy the inventive concept requirement.” *Mortgage Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (stating that receiving and sending information over a network is “not even arguably inventive”); *Accenture Global Servs. GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (database components did not make claims patent-eligible).

Appellants analogize their claimed method to the claims in *DDR Holdings LLC v Hotels.com LP*, 773 F.3d 1245 (Fed. Cir. 2014). In particular, Appellants assert that “the present invention uses the internet in a way previously unknown to academic communities,” in that it allows “a vast array of persons to centrally communicate concerns about a student who is not suffering academically.” Appeal Br. 24. Appellants also argue that their system allows a “plethora of diverse data on the student, their relationships, and needs” and allows comparison with thousands of other students, as well as “rapid review of its own efficacy.” *Id.* at 24–25. Appellants contend that “those metrics, if provided manually, would lose all of their weight as too much time would pass in getting the metrics for administrators to be able to

effect policies to address trends in student need.” *Id.* at 24. Appellants provide Declarations by Matt Boisvert² to support these points. *Id.*

The Boisvert Declarations, and Exhibits A and B attached thereto, are essentially reports on testimonials from educational institutions touting benefits of the “Pharos 360” product marketed by Pharos Resources (assignee of the present application and real party in interest identified in the present appeal). *See* Boisvert Decl. I ¶¶ 1–7; Boisvert Decl. II ¶¶ 1, 12–14. According to the Boisvert Declarations, “Pharos 360” is “the product of the invention.” Boisvert Decl. I ¶ 1; Boisvert Decl. II ¶ 1. However, Appellants do not provide sufficient details of the “Pharos 360” product to establish how closely it corresponds to the claims before us on appeal, much less whether any of the purported benefits result from claimed features of the invention. The benefits alluded to in the Declarations and Exhibits include helping quickly provide connections for students and access to information that would facilitate advising sessions with students (Boisvert Decl. I ¶ 5; Exhibit A); improved student retention rates (Exhibit A); providing a holistic approach in which faculty, staff, peers, and parents are joined in a network, or “hub,” to identify at-risk students proactively to create a supportive and caring environment to ensure no student struggles alone (Exhibit B, p. 2); the ability to access the “Pharos 360” system, with a secure login using Abilene Christian University’s single sign-on authentication system, “to aid

² Appellants submitted a Declaration by Matt Boisvert dated November 20, 2014 (hereinafter “Boisvert Declaration I” or Boisvert Decl. I”), as well as a second Declaration by Matt Boisvert dated May 5, 2015 (hereinafter “Boisvert Declaration II” or “Boisvert Decl. II”), both of which were accompanied by Exhibits A, B, and C.

in the immediacy of referrals being submitted and received” (*id.*); and an increase in referrals over a four-year period (*id.* at 3).

In short, Appellants assert that the claimed invention results in supportive networks being established at universities to assist students and at-risk students being identified and referred for assistance earlier (before academic performance is affected), leading to more effective and timely counseling and improved student retention rates. These benefits, however, reside in the mental processes (i.e., “human analysis”) performed by university administrators/coordinators, counselors, faculty, and staff to (1) identify individuals in a “Circle of Care” who could potentially provide input regarding a student’s well-being or counseling and support, (2) refer a student for consideration of assistance or counseling upon observing changes in the student, (3) determine whether the referred student is in need of assistance that could be provided, and (4) decide what type of assistance is needed and at what point the issue has been resolved. For example, the keys to the success of the method reside in the decision (the mental process) to intervene early when changes are observed in a student, before academic performance is affected, and in the identification of individuals who would be in a position to observe or support the student. Although computer components and software are used to communicate and record these mental processes, the method does not improve the functioning of the computer components themselves, or improve any other technology. As the Federal Circuit made clear in *Two-Way Media Ltd. v. Comcast Cable Communications*, the improvement must be a technical one. *See Two-Way Media Ltd. v. Comcast Cable Comm., LLC*, 874 F.3d 1329, 1338–39 (Fed. Cir. 2017) (stating that reciting an abstract idea performed on generic

computer and network components that operate according to their ordinary functions does not contain an inventive concept).

Appellants' attempt to analogize their claimed method to the claims in *DDR* is unavailing. The claims at issue in *DDR* address a specific problem of retaining website visitors who would otherwise be transported away from the host website after clicking on an advertisement on the host website and activating a hyperlink. *DDR*, 773 F.3d at 1257. The *DDR* claims call for a web server that "directs the visitor to an automatically-generated web page that combines visual 'look and feel' elements from the host website and product information from the third-party merchant's website related to the clicked advertisement." *Id.* This permits visitors "to purchase products from the third-party merchant without actually entering that merchant's website." *Id.* at 1258. Thus, the solution set forth in the *DDR* claims was determined to be "necessarily rooted in computer technology in order to overcome a problem arising in the realm of computer networks." *DDR*, 773 F.3d at 1257.

Appellants' claimed method provides multiple parties access to an information database into which information may be input, stored, and viewed. Unlike the claims in *DDR*, Appellants' claims do not recite any specific or inventive way of providing the parties access to the information database to input or view information or solve any problem arising in the realm of computer networks. The aspects of Appellants' claimed invention identified by Appellants as purportedly being inventive pertain to the parties accessing the database and the information entered into and stored on the database. These aspects do not relate to any problem arising in the realm of computer networks. The database and computer network used to implement

the claimed method perform their functions in the same manner regardless of what information is stored and which users access the information.

Appellants' arguments regarding the ability to immediately access and review the data and communications stored on the system, and assess the efficacy of the system (*see* Appeal Br. 24–25) are not persuasive. Although the use of the computer elements (computers, database, and network) may improve the efficiency of student support services efficacy analysis and speed up communications within the support network, “merely adding computer functionality to increase the speed or efficiency . . . does not confer patent eligibility on an otherwise abstract idea.” *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015); *see also LendingTree, LLC v. Zillow, Inc.*, 656 F. App'x 991, 997 (Fed. Cir. 2016) (holding ineligible claims to a computerized method of speeding up a loan-application process). Moreover,

[i]n order for the addition of a machine to impose a meaningful limit on the scope of a claim, it must play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly, i.e., through the utilization of a computer for performing calculations.

SiRF Technology Inc. v. ITC, 601 F.3d 1319, 1333 (Fed. Cir. 2010).

Appellants also argue that the claimed system allows for immediate sorting (such as classification by major, GPA, race, etc.) of profiles of students who have been served by the system to correlate prevalent needs with student profiles to permit the community to adapt to those needs and address issues proactively. Appeal Br. 25. This argument is not convincing. “[T]he 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.

Appellants assert that their invention “represents an immense improvement in a technological field,” namely, “in the field of data gathering and connectivity (triangulation between otherwise unrelated parties).” Appeal Br. 25. Appellants contend that implementation of the claimed invention “allows a user to view and assess information not previously available by any other manual or software systems and make that information available to other relevant persons.” *Id.* at 26. Appellants do not point to any improvement or advance in the way in which information is stored, retrieved, or transmitted by the computer, or any other technology, but, rather, assert an improvement in the content of the information that is gathered and transmitted. The idea (mental process) of collecting and sharing particular information is a patent-ineligible concept, as discussed above.

Appellants cite the Boisvert Declarations as “demonstrating the success and marvel by users at the improvements in statistics [at academic institutions on retention rates of students in need and the success of their counseling programs] not previously known.” *Id.* Even assuming that the collection and sharing of the particular information reflected in Appellants’ claims may be “groundbreaking,” “that is not enough for [patent] eligibility.” *SAP Am., Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1018 (Fed. Cir. 2018). An abstract idea is not patent-eligible, “no matter how groundbreaking the advance.” *Id.* at 1024.

Appellants contend that the method of claims 25–40 “is similar to that of [*BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d

1341 (Fed. Cir. 2016)] and should be seen as a ‘method of organizing human behavior.’” Reply Br. 5. To the extent that Appellants urge that claims 25–40 are patent-eligible because they are directed to a method of organizing human behavior, this position is unsound. Our reviewing court has “applied the ‘abstract idea’ exception to encompass inventions pertaining to methods of organizing human activity.” *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 613 (Fed. Cir. 2016) (citing *Intellectual Ventures I*, 792 F.3d at 1367).

Appellants argue that execution of the method of claims 25–40 “without computer implementation, like the prior art in [*BASCOM*], would be cumbersome and ineffectual,” and that, like the claims in *BASCOM*, “claims 25–40 disclose a method that was not understood, routine, or conventional prior to [Appellants’] application.” Reply Br. 5. This argument is not persuasive. As discussed above, “merely adding computer functionality to increase the speed or efficiency . . . does not confer patent eligibility on an otherwise abstract idea.” *Intellectual Ventures I*, 792 F.3d at 1370.

The court in *BASCOM* explained that, even in claims reciting only “generic computer, network and Internet components, none of which is inventive by itself,” “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces” under step two of the *Alice* framework. *BASCOM*, 827 F.3d at 1349–50. The inventive concept recited in the claims in *BASCOM* was “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user,” giving “the filtering tool both the benefits of a filter on a local computer and the benefits

of a filter on the ISP server.” *Id.* at 1350. Further, the patent in *BASCOM* “describes how its particular arrangement of elements is a *technical* improvement over prior art ways of filtering such content,” which “were either susceptible to hacking and dependent on local hardware and software, or confined to an inflexible one-size-fits-all scheme.” *Id.* (emphasis added). Thus, “the claims [in *BASCOM*] may be read to ‘improve[] an existing technological process.’” *Id.* at 1351 (citing *Alice*, 573 U.S. at 222–224). By “providing individualized filtering at the ISP server,” the invention recited in the *BASCOM* claims “represents a ‘software-based invention[] that improve[s] the performance of the computer system itself.’” *Id.* at 1351. By contrast, the method of claims 25–40 before us in this appeal do not improve the performance of the computer system used to implement the method. As discussed above, the computers, database, and network used to implement the claimed method receive, store, classify, and transmit data in their normal, expected manner. The claimed method does not represent an improvement in the technology itself.

For the above reasons, the recited elements of claims 25–40, considered individually and as an ordered combination, do not constitute an “inventive concept” that transforms the claims into patent-eligible subject matter. *See Alice*, 573 U.S. at 217. Accordingly, we sustain the rejection of claims 25–40 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

DECISION

The Examiner’s decision rejecting claims 25–40 is **AFFIRMED**.

Appeal 2017-004897
Application 12/173,523

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED