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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JITENDRA AJMERA, SHANTANU RAVINDRA GODBOLE,  
HIMABINDU LAKKARAJU, BERNARD ANDREW RODEN, and  
ASHISH VERMA<sup>1</sup>

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Appeal 2017-005334  
Application 13/408,547<sup>2</sup>  
Technology Center 3700

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Before STEFAN STAICOVICI, BRANDON J. WARNER, and  
FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jitendra Ajmera et al. (Appellants) appeal under 35 U.S.C. § 134(a) from the Examiner’s decision, set forth in the Final Action (Dec. 16, 2015, hereinafter “Final Act.”), rejecting claims 14–17, 22–25, 28, and 29.<sup>3</sup> We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

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<sup>1</sup> Appellants represent in their Appeal Brief (Apr. 18, 2016, hereinafter “Appeal Br.”) the Real Party in Interest is International Business Machines Corporation. Appeal Br. 3.

<sup>2</sup> This appeal is related to Application 13/599,180, which is also before the Board and has been assigned Appeal 2017-001304. *See* Appeal Br. 4.

<sup>3</sup> Claims 1–13, 18–21, 26, and 27 have been canceled. Appeal Br. 27, 30, 31 (Claims App.).

### CLAIMED SUBJECT MATTER

The subject matter of Appellants' claimed invention relates to "finding solutions to problems, concerns and questions" within a social media platform by using a method that obtains a question; consults the platform; ascertains the question legitimacy; harvests an answer to the question from within the social media; and filters out the question if it is not determined to be legitimate. ¶¶ 1–2.

Claims 14 and 15 are independent. Claim 14 is representative of the claimed subject matter, and recites:

14. An apparatus comprising:
  - at least one processor; and
  - a computer readable storage medium having computer readable program code embodied therewith and executable by the at least one processor, the computer readable program code comprising:
    - computer readable program code configured to establish at least one legitimacy standard for filtering questions;
      - wherein the at least one legitimacy standard includes presence of a question pattern and at least one exception relative to the question pattern;
    - computer readable program code configured to automatically obtain a question from at least one social media conversation;
    - computer readable program code configured to ascertain a legitimacy of the question, based on the at least one legitimacy standard, via:
      - determining presence of a question pattern; and
      - determining presence of at least one exception to the question pattern;
    - wherein the determined at least one exception to the question pattern comprises at least one of: sentiment, author reputation, nature of one or more responses to the question, and a number of sentences relative to the question;

computer readable program code configured to harvest from at least one social media conversation an answer to the question, wherein the harvesting comprises:

harvesting an answer comprising at least one rich media component taken from the group consisting of: video content; audio content; picture content; and

harvesting text associated with the at least one rich media component;

computer readable program code configured to obtain metadata information associated with the at least one rich media component; and

computer readable program code configured to filter out the question if the question is not determined to be legitimate.

Appeal Br. 27–28 (Claims App.).

#### REJECTIONS

The following rejections are before us for review:

- I. Claims 14–17 and 22–25 are provisionally rejected for non-statutory obviousness-type double patenting as unpatentable over claims 1–3, 8–13, and 16 of co-pending U.S. Application No. 13/599,180.
- II. The Examiner rejected claims 14–17, 22–25, 28, and 29 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.
- III. The Examiner rejected claims 14–17, 22–25, 28, and 29 under 35 U.S.C. § 112, second paragraph, as being indefinite.
- IV. The Examiner rejected claims 14–17, 22–25, 28, and 29 under 35 U.S.C. § 103(a) as unpatentable over Sathish (US 2011/0082825 A1, pub. Apr. 7, 2011) and Duboue (US 2011/0125734 A1, pub. May 26, 2011).

## ANALYSIS

### *Rejection I – Double Patenting*

The Examiner determines claims 14–17, 22–25, 28, and 29 are not patentably distinct over claims 1–3, 8–13, and 16 of co-pending U.S. Application No. 13/599,180 (hereinafter, “the ’180 Application”) “because the claims in the [’180 Application] are merely the method implementation of the claims in the instant application.” Final Act. 3. Appellants, challenging the Examiner’s non-statutory double patenting determination, simply state, “the claim language from [the related applications is] not identical and are patently distinct,” without identifying any distinguishing claim language. Appeal Br. 11. Appellants assert further that, “even if the claim language [were] similar, the claims fall under two statutorily distinct classes.” *Id.* at 11–12. However, no authority is cited suggesting this fact is determinative, nor are we aware of any such authority. As a result, we only have Appellants’ naked assertions that the Examiner’s obviousness-type double patenting rejection is improper, which is unpersuasive for the following reasons.

The doctrine of obviousness-type double patenting is intended to prevent the extension of the term of a patent by prohibiting the issuance of claims in a second patent not patentably distinct from the claims of a first patent. *See In re Longi*, 759 F.2d 887, 892 (Fed. Cir. 1985). “A later patent claim is not patentably distinct from an earlier claim if the later claim is obvious over, or anticipated by, the earlier claim.” *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 968 (Fed. Cir. 2001). Just as the inquiry under 35 U.S.C. § 103(a) requires us to consider the claimed subject matter “as a whole,” so too must we consider whether the currently claimed subject

matter “as a whole” is non-obvious over the claimed subject matter of the co-pending application. *Eli Lilly & Co. v. Teva Parenteral Medicines, Inc.*, 689 F.3d 1368, 1377 (Fed. Cir. 2012).

Having compared the claims from the related applications, we agree with the Examiner’s following findings and rationale:

While the claims do fall under different statutory classes, the claims are substantially similar except that the instant application recites apparatus and computer program product, respectively, in claims 14 and 15, while the other application recites the method in claim 1. The body of the claims and the claims as a whole overlap significantly in scope such that there are no patentable distinction[s]; the claims essentially are obvious variants of each other even if their respective preambles are different.

Ans. 3. The only significant difference between the claims of the co-pending applications is that the current application recites a computer readable program code stored within a non-transitory computer memory whereas the ’180 Application recites *utilizing* a processor to execute computer code, but nonetheless, both recite computer code that cause a computer to perform substantially the same operations. These differences are not patentably distinct. Therefore, we sustain the Examiner’s decision to provisionally reject claims 14–17, 22–25, 28, and 29 for non-statutory obviousness-type double patenting.

#### *Rejection II – Patent-Ineligible Subject Matter*

The Examiner determines claims 14–17, 22–25, 28, and 29 are “directed to an abstract idea,” which do not claim “anything significantly more than an idea in and of itself.” Final Act. 3–4. Appellants contend claim 14 “precludes any reasonable interpretation of the claim as being directed to an abstract idea” because it is “directed to a particular technique of obtaining, legitimizing, and answering questions to be added to a

knowledge base that adds functionality to a computer.” Appeal Br. 16. Furthermore, even if an abstract idea, Appellants submit the claims are patent eligible because “specific limitations other than what is well-understood, routine and conventional in the field” are recited. *Id.* at 17. In this appeal, Appellants neither argue for the eligibility of any other claim if claim 14 is ineligible nor present any meaningful arguments for the distinctive significance of any claim limitation other than those included in claim 14. For the following reasons, Appellants’ challenges are not persuasive.

Section 101 of the Patent Act defines patent-eligible subject matter: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. In interpreting this statutory provision, the Supreme Court has held that its broad language is subject to an implicit exception for “laws of nature, natural phenomena, and abstract ideas,” which are not patentable. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014).

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*, 134 S. Ct. at 2355 (*citing Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S. Ct. 1289, 1294 (2012)). According to the Supreme Court’s framework, we must first determine whether the claims at issue are directed to one of those concepts (i.e., laws of nature, natural phenomena, and abstract ideas). *Id.* If so, we must 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.* The Supreme Court characterizes the second step 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.*

The Examiner finds *Electric Power Group v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016), applying the above framework, to be instructive. Ans. 4. We agree. The patents in that case “describe and claim systems and methods for performing real-time performance monitoring of an electric power grid by collecting data from multiple sources, analyzing the data, and displaying results.” *Id.* at 1351.

Applying the first prong of the framework for considering patent eligibility, the Federal Circuit observed that its precedent has “treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Id.* at 1353. Moreover, “analyzing information by steps people go through in their minds, or by mathematical algorithms” have also been treated “as essentially mental processes within the abstract-idea category.” *Id.* at 1354. Because the claims focused on processing information itself and the use of a computer as a tool to improve that process, the Federal Circuit held the claims were properly characterized as being directed to an abstract idea rather than to an improvement of computer functionality. *Id.*

Evaluating the second prong the patent eligibility framework, the Federal Circuit held, “merely selecting information, by content or source, for



collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Id.* at 1355. The Court focused more acutely on the claim language for this prong and noted that no new data was generated because it did not require a new source or type of information, or new techniques for analyzing it, nor did they invoke any inventive programming. *Id.* “Merely requiring the selection and manipulation of information . . . by itself does not transform the otherwise-abstract processes of information collection and analysis.” *Id.* Lastly, looking at *how* the claims achieved the desired results, the Court found nothing transformative because they only used conventional, generic computer technology. *Id.* at 1355–56.

Similar to the claims in *Electric Power Group*, the Examiner finds Appellants’ claims are directed to harvesting information by collecting, comparing, and organizing intangible data. Final Act. 4. Not inconsistent with this finding, Appellants characterize the claims as “directed to a particular technique of obtaining, legitimizing, and answering questions to be added to a knowledge base that adds functionality to a computer.” Appeal Br. 16. Although Appellants argue that this characterization “precludes any reasonable interpretation of the claim as being directed to an abstract idea,” the contrary is true. *Id.* Appellants’ characterization confirms the claims focus on processing information and using a computer as merely a tool to improve that process, which the Federal Circuit has held is an abstract idea rather than to an improvement of computer functionality. *Electric Power Group*, 830 F.3d at 1354.

Appellants argue further that the claims recite a technique for creating an “enhanced knowledgebase,” which cannot be included within the gambit of “abstract ideas” because it is “necessarily rooted in computer technology.” Appeal Br. 16 (quoting *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)). But, we are not persuaded this is the case. Appellants’ claim 14 recites a processor and a computer readable storage medium having computer readable code, which is configured to cause the computer to perform a series of steps, such as “automatically obtain a question,” “ascertain a legitimacy of the question,” “harvest . . . an answer to the question,” “obtain metadata information,” and “filter out the question if the question is not determined to be legitimate.” Appeal Br. 27–28 (Claims App.). While an “enhanced knowledgebase” may be created, Appellants’ claims are directed to generalized steps to be performed on a computer using conventional computer activity, which is not patent eligible. *Two-Way Media Ltd. V. Comcast Cable Comms., LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017).

Finding no error with the Examiner’s determination that Appellants’ claims are directed to an abstract idea, we turn to whether the claims include something that transforms them into a patent-eligible application of the abstract idea. The Specification states the claimed subject matter “can be carried out on or in accordance with essentially any suitable computer system or set of computer systems.” Spec. ¶ 14. The Examiner finds the claims require nothing more than, “a generic computer performing generic computer functions, mere instructions to implement an abstract idea on a computer, and/or limitations that are well-understood, routine, and

conventional in the field such as filtering out questions based on legitimacy.” Final Act. 4. Additionally, the Examiner finds,

The claims in this case specify what information in the knowledgebase field it is desirable to gather, analyze, and display, including “filtering out” information; but they do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept in the realm of application of the information-based abstract ideas.

Ans. 5. Appellants fail to apprise us of any error with the Examiner’s findings, nor is an error evident. Appellants simply assert, without any further evidence or analysis, the claims “add ‘significantly more’ to obtaining a question from a social media conversation, evaluating the legitimacy of the conversation, and harvesting an answer to the question,” which we find unpersuasive. Appeal Br. 17.

In summary, Appellants have not shown persuasively any errors with the Examiner’s determination claims 14–17, 22–25, 28, and 29 cover patent-ineligible subject matter. Therefore, we sustain the Examiner’s rejection of these claims.

### *Rejection III – Indefiniteness*

The Examiner concludes claims 14–17, 22–25, 28, and 29 are indefinite under 35 U.S.C. § 112, second paragraph, because the specification does not definitively define what the structure is for the “computer readable program code” phrased limitations, which flows from the Examiner’s initial conclusion that these phrases are properly construed as means-plus-function limitations pursuant to 35 U.S.C. § 112, sixth paragraph. Final Act. 6–8. Thus, before considering the Examiner’s indefiniteness conclusion, we must consider whether 35 U.S.C. § 112, sixth

paragraph, was properly invoked. If the claims are not properly construed as means-plus-function limitations, then the indefiniteness rejection cannot be sustained because the Examiner has not suggested the claim language itself is unclear.<sup>4</sup>

The word “means” is not recited in the claims. As a result, there is a presumption that the limitation is not a means-plus-function limitation that should be construed in accordance with §112, sixth paragraph. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (en banc) (“When a claim term lacks the word ‘means,’ the presumption can be overcome and § 112, para. 6 will apply if the challenger demonstrates that the claim term fails to ‘recite[] sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” (citation omitted)). Here, the Examiner simply concludes “computer readable program code” with the recited operations is properly viewed as a means-plus-function limitation. No evidence is provided, nor a persuasive explanation, why a skilled artisan would view this language as lacking sufficient structure to perform the recited operations. On the current record,

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<sup>4</sup> In the Answer, the Examiner remarks, “[f]or the sake of argument, in the event that it is unclear whether the claim limitation falls within the scope of 35 U.S.C. 112[, sixth paragraph], a rejection under 35 U.S.C. 112[, second paragraph], may be appropriate.” Ans. 9 (citing MPEP § 2181, Part III). To be clear, we do not understand any rejection pursuant to 35 U.S.C. 112, second paragraph, to be before us separate and apart from the Examiner’s determination that the Specification fails to satisfy the requirements of 35 U.S.C. 112, sixth paragraph. The only ambiguity with the claim language identified by the Examiner relates to the alleged failure of the Specification to clearly link structure to the recited functions, which necessarily depends on the claims being properly considered to invoke 35 U.S.C. 112, sixth paragraph.

there is insufficient persuasive argument or evidence to overcome the presumption that means-plus-function claiming under 35 U.S.C. § 112, sixth paragraph, is not invoked. As a result, the Examiner erred by construing the “computer readable program code” limitations as means-plus-function limitations. Therefore, we do not sustain the Examiner’s indefiniteness rejection of claims 14–17, 22–25, 28, and 29.

*Rejection IV – Obviousness*

The Examiner’s obviousness determination of claims 14 and 15 depend on a finding that Sathish teaches a computer readable program code configured to: (1) “establish at least one legitimacy standard for filtering *questions*,” (2) “automatically obtain a *question* from at least one social media conversation,” (3) ascertain a legitimacy of the *question*,” and (4) “filter out the *question* if the *question* is not determined to be legitimate.” Final Act. 8 (emphasis added). The Examiner finds Sathish discloses these limitation in paragraphs 23, 24, 26, 45, 51, 92, 95, and 99. *Id.* Appellants disagree those paragraphs “have [anything] to do with establishing a legitimacy standard for filtering *questions*.” Appeal Br. 21–22 (emphasis added).

The Examiner counters by suggesting Appellants ignore the context in which the supporting evidence is found in Sathish. Ans. 10. To set the context for considering how Sathish discloses a legitimacy standard for filtering questions, the Examiner notes the invention of Sathish “is concerned with the ever expanding amount of data contributed by end users such as Internet question posting.” *Id.* (citing Sathish ¶ 23). The Examiner describes Sathish as ultimately addressing this concern by using a co-creation platform that “matches content generating assignments (e.g.,

Internet question posting, answering information requests) with users/experts who can undertake the assignments; the matching links expertise tags with assignment tags.” *Id.* (citing Sathish ¶¶ 24, 26).

“With this context in mind,” the Examiner explains a skilled artisan would understand paragraph 45 of Sathish “teaches that matches against user expertise models using a category of model associated with specific characteristics that may include expertise categories” and paragraph 51 “teaches that the user model can also be used for secondary fine grained filtering; media houses then can choose from a set of categories that describe the expected expertise from user candidates.” *Id.* Therefore, the Examiner concludes, “the steps described by Sathish essentially allow for establishing a legitimacy standard (expected expertise) for filtering questions (the chosen categories may then be used to derive assignment tags against which the user expertise models may be applied).” *Id.*

The Examiner notably has not offered any reasonable interpretation of claims 14 and 15 that would extend its scope to include what Sathish discloses, nor is it readily apparent such a construction is available. Although we appreciate Sathish filters information based on criteria introduced by a query, the Examiner has not shown persuasively Sathish takes any steps to filter the queries themselves. Claims 14 and 15 require a legitimacy standard to filter the *questions* themselves and exclude the *questions* determined to be illegitimate. The Examiner’s findings Sathish discloses this functionality lacks evidentiary support. Therefore, we do not sustain the Examiner’s obviousness determination of claim 14–17, 22–25, 28, and 29.

DECISION

We affirm the Examiner's provisional rejection of claims 14–17 and 22–25 for non-statutory double patenting over co-pending U.S. Application No. 13/599,108.

We affirm the Examiner's rejection of claims 14–17, 22–25, 28, and 29 as directed to patent-ineligible subject matter.

We reverse the Examiner's rejection of claims 14–17, 22–25, 28, and 29 as being indefinite.

We reverse the Examiner's rejection of claims 14–17, 22–25, 28, and 29 as unpatentable over Sathish and Duboue.

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