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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EBBE ALTBERG, SCOTT FABER, RON HIRSON,
SEAN VAN DER LINDEN, and PAUL G. MANCA

Appeal 2017-005430
Application 11/678,032
Technology Center 3600

Before JUSTIN BUSCH, MATTHEW J. McNEILL, and
JASON M. REPKO, *Administrative Patent Judges*.

REPKO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–11, 13, and 15–24. App. Br. 8.² Claims 12 and 14 were canceled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ Appellants identify the real party in interest as YP Holdings LLC, the ultimate parent company of YellowPages.com LLC. App. Br. 1.

² Throughout this opinion, we refer to the Final Rejection (“Final Act.”) mailed March 15, 2016; the Appeal Brief (“App. Br.”) filed September 1, 2016; the Examiner’s Answer (“Ans.”) mailed December 15, 2016; and the Reply Brief (“Reply Br.”) filed February 15, 2017.

THE INVENTION

Appellants' invention tracks communication leads generated from advertisements. Spec. ¶ 12. One embodiment provides advertisements on behalf of a party, counts phone calls delivered via advertisements, and charges the party using the count. *Id.* ¶¶ 13, 52.

Claim 1 is reproduced below:

1. A method to make and track connections for voice-based communications, comprising:

transmitting, by a first server of a communication connection system, a document to generate a user interface to receive specifications for a first set of parameters of an advertisement;

generating the advertisement by the communication connection system with an advertisement creation module based at least in part on the specifications for the first set of parameters for the advertisement, the advertisement for provisioning to customers on behalf of a specific party, and storing the advertisement in a database of the communication connection system;

transmitting, by the communication connection system, the advertisement to a third party server for provision to customers on behalf of the specific party;

receiving, by receiving equipment of the communication connection system, communications responsive to the advertisement over a communication network;

establishing communication connections for the communications, via switching equipment of the communication connection system, with a communication reference of the specific party;

tracking the communication connections by the switching equipment, the tracking comprising counting voice-based communication leads that are delivered via the advertisement;

charging an account of the specific party maintained by the communication connection system a subscription fee for a pre-determined time period wherein the subscription fee is based on delivering a pre-determined number of the voice-based communication leads via the advertisement within the pre-determined time period,

and the subscription fee is further based on past performance of advertisements in a particular category; and

during the pre-determined time period, automatically changing by the communication connection system a second set of parameters for the advertisement based at least in part on comparing a first metric of the established communication connections to a threshold and determining whether the threshold is satisfied, wherein the threshold is based at least in part on the pre-determined number of the voice-based communication leads; and

transmitting the advertisement for provisioning to customers on behalf of the specific party based at least in part on the second set of parameters for the advertisement, the advertisement transmitted to the customers via respective voice over internet protocol calls.

THE REJECTION

Claims 1–11, 13, and 15–24 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 2–4.

ANALYSIS

The Examiner rejects representative³ claim 1 under 35 U.S.C. § 101 because the claim is directed to an abstract idea of “tracking advertiser communication leads” and lacks an inventive concept sufficient to transform

³ Appellants argue claims 1–11, 13, and 15–24 as a group. *See* App. Br. 8–28. We select independent claim 1 as representative of claims 1–11, 13, and 15–24. *See* 37 C.F.R. § 41.37(c)(1)(iv).

the claimed invention into patent-eligible subject matter. Final Act. 2–4. As discussed below, Appellants have not persuaded us that the Examiner erred in this regard.

I

The Supreme Court’s two-step framework guides our analysis. *See Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Id.*

We agree with the Examiner that claim 1 is directed to the abstract idea of “tracking advertiser communication leads.” Final Act. 2. We are unpersuaded by Appellants’ argument that the Examiner has oversimplified the claims in applying *Alice* step one. App. Br. 10–13.

Claim 1 recites a method to make and track connections for voice-based communications, e.g., phone calls. *See* Spec. ¶ 97. The method overcomes the limitations of performance-based advertising. *Id.* ¶ 2. In performance-based advertising, the advertiser pays for only a measurable event directly resulting from a consumer viewing the advertisement. *Id.* ¶ 9. According to the Specification, this type of advertising typically requires a web page. *Id.* But some advertisers do not have a web page, or if they do, their web page may be unable to capture a web visitor’s value. *Id.* Such advertisers are unable or unwilling to participate in traditional performance-based advertising. *Id.*

To address this issue, the claimed method provides advertisements to customers on behalf of a party and then counts the phone calls delivered via the advertisements. *Id.* ¶¶ 52, 372. For example, the advertisement may

include a unique phone number. *Id.* ¶ 52. To count the phone calls, the system monitors calls to that unique number. *Id.* A fee can be based on the number of leads generated from the advertising. *See, e.g., id.* ¶¶ 377, 380.

Appellants' claimed solution is not rooted in a *technical* improvement. Rather, the recited method involves counting and tracking as an alternative to a web page. *See id.* ¶¶ 9, 368–372. In this way, claim 1's focus is advertising and tracking the resulting leads. *Accord* Final Act. 2.

The recited concept is not “internet centric” in a way that affects whether the claims are directed to an abstract idea. *See* App. Br. 16–17; Reply Br. 4–9. Apart from the limitations drawn to making and tracking the connections, claim 1 recites a “communication connection system” having “switching equipment.” The claim, however, does not recite improvements to this system or its switching equipment. Here, Appellants merely claim a generic communication-connection system.

The tracking itself is not rooted in computer technology, contrary to Appellants' argument (*see* App. Br. 23; Reply Br. 4–9). According to the Specification, “[t]racking phone calls may include publishing a unique phone number that is different from the advertiser's standard phone number” and counting calls to that number. *Id.* ¶ 97; *see also id.* ¶¶ 55, 372. In this way, the claimed method may provide an alternative for advertisers able to participate in typical webpage-based advertising. *Id.* ¶ 9. Indeed, claim 1 broadly and abstractly recites tracking and counting these phone calls without reciting how this is accomplished.

Appellants note that a general-purpose computer cannot carry out all the recited steps. Reply Br. 3. According to Appellants, the claims are directed to a communication-connection system for securely establishing

and tracking connections for voice-based communications. App. Br. 10–13, 18, 23, 27; Reply Br. 6. For example, the claimed equipment could include telephone-switching equipment. Spec. ¶ 162.

But such a minimal limitation, by itself, does not remove the claim from the realm of abstract ideas. For example, the Federal Circuit determined that claims directed to “collecting data” were abstract even though an “automated digitizing unit” collected the data. *Two-Way Media Ltd. v. Comcast Cable Commc’ns*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017). Similarly, claim 1’s generically recited components do not shift the claim’s focus away from advertising. Final Act. 2.

Indeed, software “can make non-abstract improvements to computer technology just as hardware improvements can.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). But we must consider whether the claim’s focus is on a “specific asserted improvement in computer capabilities . . . , or, instead on a process that qualifies as an ‘abstract idea’ for which computers are merely invoked as a tool.” *Id.* at 1336. Here, Appellants invoke computers as a tool. As the Examiner points out, claim 1’s communication-connection system merely serves to transmit and provide the advertisements and carry out the abstract idea. *See* Final Act. 5–6.

The Examiner identifies other cases involving concepts related to advertising that were held to be abstract. Ans. 2. For example, the Examiner finds that Appellants’ claims are similar to those found to be abstract in *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014). *Id.* The *Ultramerical* claims recited limitations that added a degree of particularity—e.g., “consulting an activity log”—but the majority of the limitations described only the abstract idea relating to the advertising

concept. *Ultramercial*, 772 F.3d at 715, cited in Ans. 3. Similarly, claim 1 recites a user interface and some equipment, but claim 1’s focus is on tracking advertiser-communication leads, not improvements to the interface or equipment. See Final Act. 4.

Appellants argue that the claims are unlike those in *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 F. App’x. 988 (Fed. Cir. 2014) (unpublished). App. Br. 13–17; Reply Br. 1–2. Appellants point to the Examiner Guidance to support their argument that the Examiner erred. Reply Br. 2. Notably, the quoted portion of that Guidance permits Examiners to apply *Cyberfone* at least when the facts match. *Id.* And the Examiner has made findings regarding why the facts in *Cyberfone* match those here. See Final Act. 2–3. Yet Appellants have not provided a persuasive rebuttal to the Examiner’s findings. See App. Br. 13–17.

Instead, Appellants merely summarize the claims in *Cyberfone* and reproduce the claims in this case. *Id.* In doing so, Appellants have not persuasively explained why the Examiner’s reliance on *Cyberfone* is in error. *Id.* at 13–17; Reply Br. 1–2. Moreover, we note that the Examiner has also cited other cases, such as *Ultramercial*, as discussed above. See Ans. 2. That is, the Examiner’s reliance on *Cyberfone* is cumulative and in the alternative. See *id.* So, any error in this regard does not change the result here. For the reasons discussed above, we are unpersuaded that the Examiner erred in concluding that claim 1 is directed to an abstract idea.

II

Because claim 1 is “directed to an abstract idea,” we consider the claim limitations “both 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 Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)) (emphasis added). That is, we must ask in *Alice* step two “[w]hat else is there in the claims before us?” *Mayo*, 566 U.S. at 78.

The Supreme Court has described this analysis “as a search for an ‘inventive concept.’” *Alice*, 134 S. Ct. at 2355. The “inventive concept” cannot be the abstract idea itself. *See Mayo*, 566 U.S. at 72–73 (requiring “*other elements or a combination of elements*, sometimes referred to as an ‘inventive concept,’ sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself” (emphasis added)).

Appellants argue that “both the elements recited and the combination of the recited elements are both essential to the successful implementation of the claims.” App. Br. 22. Appellants contend that the claimed system is rooted in technology like the system in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). *Id.* at 25; Reply Br. 4–9.

But here, there is no indication that the recited computing devices produce “a result that overrides [their] routine and conventional” use. *DDR Holdings, LLC*, 773 F.3d at 1258. In particular, the Examiner concludes that claim 1’s additional elements are no more than mere instructions to implement an abstract idea on a computer. Final Act. 3. Apart from the abstract idea itself, the claims recite a communication-connection system, a server, a database, receiving equipment, a network, and switching equipment. The Examiner finds that these components are generic. *See id.*; Ans. 2. Although Appellants argue this finding lacks support (App. Br. 23–

24), we note that the Examiner has supported this argument by citing the Specification. *See* Ans. 2 (Spec. ¶¶ 49, 51, 74, Figs. 1, 2, 11).

For instance, the Examiner-cited paragraphs show that the invention is not tied to a particular communications path. *See* Spec. ¶¶ 49, 51. In one embodiment, clients are coupled to a wide area network (WAN) 14, such as the Internet, via a communications path. *Id.* ¶ 49. Advertisers may be coupled to WAN 14, but this is “purely optional.” *Id.* ¶ 51. The communications path may be “a conventional telephone network,” VoIP technology, or “switches of a public telephone network.” *Id.* The advertiser could also use email, chat, instant message, VoIP clients, or other media channels. *Id.* Furthermore, the hardware used to implement the method is a generic computer system. *Id.* ¶ 74. As further shown by the Examiner-cited paragraphs, the recited method does not use a particular communication channel or computer system. *See id.* ¶¶ 49, 51, 74. Instead, the recited components merely execute the abstract idea. *See id.*

Appellants argue that *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) supports the eligibility of claim 1. Reply Br. 9–13. Appellants contend that claim 1 provides a specific improvement to a computer’s capabilities. App. Br. 27. According to Appellants, claim 1 achieves “an improved technological result over conventional industry practices.” Reply Br. 10. In Appellants’ view, the recited method involves a nonobvious solution with a specific combination of features that overcomes the “strict and unaccommodating” system imposed by the World Wide Web’s infrastructure. *Id.* at 11. In particular, Appellants contend that the claimed configuration minimizes or eliminates

inefficiencies associated with an unsecure and erroneous communication connection. *Id.* at 12–13.

The claims in *McRO* recited a specific way to improve three-dimensional animation. 837 F.3d at 1315. By contrast, Appellants' claims are broadly functional and result-oriented. For example, claim 1 recites tracking without reciting a particular technological improvement or inventive computer-based solution for doing so. To be sure, claim 1 does add some particularity to how the recited accounts are charged a subscription fee and when to change the advertisement parameters. But these limitations merely narrow the abstract idea itself. The claims and the Specification show that these limitations require no improved computer resources that Appellants claim to have invented. Rather, the limitations—considered both individually and as an ordered combination—merely invoke already available computers using their available functions as tools to execute the abstract idea. Ans. 2 (citing Spec. ¶¶ 49, 51, 74, Figs. 1, 2, 11).

Therefore, Appellants have not persuaded us of error in the rejection of representative claim 1 under 35 U.S.C. § 101. We sustain the Examiner's rejection of claim 1 and claims 2–11, 13, and 15–24, which Appellants argue together with claim 1. *See* App. Br. 8–28.

DECISION

We affirm the Examiner's rejection of claims 1–11, 13, and 15–24.

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