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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY A. PICCIONELLI and MICHAEL M. GERARDI

Appeal 2017-005549¹
Application 13/317,622²
Technology Center 3600

Before NINA L. MEDLOCK, KENNETH G. SCHOPFER, and
AMEE A. SHAH, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–8, 10–18, 33–35, and 38–55. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed November 15, 2016) and Reply Brief (“Reply Br.,” filed February 15, 2017), and the Examiner’s Answer (“Ans.,” mailed December 15, 2016) and Final Office Action (“Final Act.,” mailed June 15, 2016).

² Appellants identify the inventors, Gregory A. Piccionelli and Michael M. Gerardi, as the real parties in interest. App. Br. 1.

CLAIMED INVENTION

Appellants' claimed invention "relates to a method[,] system[,] and apparatus for enabling an inquiring individual to contact a target individual and for the target individual to authorize such contact" (Spec. 1).

Claims 1, 33, and 38 are the independent claims on appeal. Claims 1 and 38, reproduced below, are illustrative of the claimed subject matter:

1. A method of establishing personal contact between an inquiring individual and a target individual, the inquiring and target individuals being members of an organization, the method comprising the steps of:

a) identifying a target individual located in a specific geographic area with a network enabled inquiring device that is able to communicate over a network and associated with an inquiring individual in response to the inquiring individual, the network enabled inquiring device identifying the specific geographic area of the target individual, where the specific geographic area is in visual proximity of the network enabled inquiring device,

b) determining a location of the specific geographic area and transmitting via the network enabled inquiring device to a computer of the organization that is accessible by the network,

c) providing to a communication device that is able to access the network and is associated with the target individual a message from the computer in response to the receipt of the location and identifying the communication device associated with the target individual, wherein the message includes information that the inquiring individual is interested in establishing personal contact with the target individual,

d) providing the network enabled inquiring device with authorization to establish personal contact with the target individual when the target individual provides a positive response via the communication device,

e) selecting an on-line video file for co-ordinated on-line video viewing by the inquiring individual on the network enabled inquiring device and the target individual on the communication device, in response to a prompt from the computer, and

f) viewing at least a portion of the selected on-line video file, the viewing being performed simultaneously by the network enabled inquiring device and the communication device.

38. A method of establishing contact between an inquiring individual and a target individual, the inquiring and target individuals being members of an organization, the method comprising the steps of:

a) accessing a computer of the organization via a network;
b) receiving network enabled inquiring device location data at the computer from a network enabled inquiring device associated with an inquiring individual via the network, where a specific geographic area is determined by the computer after receipt of network enabled inquiring device location data;

c) receiving communication device location data at the computer from a communication device associated with a target individual via the network, where the communication device is determined to be in the specific geographic area in response to receipt of communication device location data by the computer;

d) sending an inquire message from the computer to the communication device that indicates data associated with the computer from a network enabled inquiring device is sought to be exchanged with the communication device; and

e) receiving an authorization message at the computer that enables additional communication regarding the network enabled inquiring device from the computer.

REJECTIONS

Claims 1–8, 10–18, and 39–55 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out, and distinctly claim the subject matter that Appellants regard as the invention.

Claims 1–8, 10–18, 33–35, and 38–55 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claim 38 is rejected under 35 U.S.C. § 102(e) as anticipated by Stevens (US 2004/0014457 A1, pub. Jan. 22, 2004).

Claims 1, 4–8, 10–16, 18, and 39–55 are rejected under 35 U.S.C. § 103(a) as unpatentable over Stevens, Mayer (WO 01/98856 A2, pub. Dec. 27, 2001), and Jacoby et al. (US 2006/0271960 A1, pub. Nov. 30, 2006) (“Jacoby”).³

Claim 2 is rejected under 35 U.S.C. § 103(a) as unpatentable over Stevens, Mayer, Jacoby, and Banbury (US 5,646,783, iss. July 8, 1997).

Claim 3 is rejected under 35 U.S.C. § 103(a) as unpatentable over Stevens, Mayer, Jacoby, Banbury, and Risemberg (US 5,920,845, iss. July 6, 1999).

Claim 17 is rejected under 35 U.S.C. § 103(a) as unpatentable over Stevens, Mayer, Jacoby, and Ackerman (US 2003/0200217 A1, pub. Oct. 23, 2003).

Claims 33–35 are rejected under 35 U.S.C. § 103(a) as unpatentable over Stevens, Frank Armstrong, “What’s love got to do with it? Everything,” Kingston Whig-Standard, Kingston, Ont. (Jan. 19, 2000) (“Armstrong”), and Jacoby.

ANALYSIS

Indefiniteness

Appellants do not present any response to the Examiner’s rejection of claims 1–8, 10–18, and 39–55 under 35 U.S.C. § 112, second paragraph. Therefore, the Examiner’s rejection is summarily sustained.

³ We treat, as inadvertent, the Examiner’s omission of claim 18 in identifying the claims subject to rejection at page 7 of the Final Office Action in view of the Examiner’s discussion of claim 18 at page 10.

Patent-Ineligible Subject Matter

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

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 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 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.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, 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 there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312

(Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Here, in rejecting the pending claims under § 101, the Examiner determined that claims 1–8, 10–18, 33–35, and 39–55 are directed to “identifying a target individual located in a specific geographical area and establishing contact,” which the Examiner concluded is a method of organizing human activity and, therefore, an abstract idea, and that claim 38 is directed to “establishing contact between two people,” i.e., to a method of organizing human activity related to managing transactions between people (Final Act. 3). The Examiner also determined that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception (*id.*).

Appellants argue that the rejection cannot be sustained because the Examiner has failed to consider the claims as a whole (App. Br. 9). Quoting limitations c) through f), as recited in claim 1, Appellants assert that “[n]o simple out of the box computer is capable of these functions. It must be further enabled to communicate to a server that receives and provides responses as claimed and described in the Application” (*id.* at 10).

Appellants, thus, maintain “there is an improvement to the functioning of the computer itself and limitations beyond generally linking the use of an abstract idea to a particular technological environment” (*id.*). Yet, we find no indication in the record, nor do Appellants direct us to any indication, that the particular operations recited in claim 1 require any specialized computer hardware or other inventive computer components, invoke any assertedly inventive programming, or that the claimed invention is implemented using

other than generic computer components to perform the claimed method steps.

Appellants do not purport to have invented enabling communication to a server from a device. Indeed, as the Examiner observes, generic processors and computers, predating the claimed invention, are able to communicate with a server to transmit and receive information (Ans. 3). Moreover, we find nothing in the Specification that attributes any improvement in network communication, e.g., enabling a computer to communicate with a server, to the claimed invention.

We also are not persuaded of Examiner error by Appellants' further argument that the claims are not directed to organizing human activity but instead are about devices that are associated with people (App. Br. 10–11). Appellants' argument, as best understood, is that the claims recite interactions between devices associated with people as opposed to interactions between the individuals themselves. But, as the Examiner observes, the devices are merely the platform on which the organization of human activity is implemented, i.e., the devices are merely used to convey information that could be conveyed in a face-to-face manner (Ans. 4).

We are not persuaded, on the present record, that the Examiner erred in rejecting 1–8, 10–18, 33–35, and 38–55 under 35 U.S.C. § 101. Therefore, we sustain the Examiner's rejection.

Anticipation

Appellants contend that the rejection of claim 38 under 35 U.S.C. § 102(e) is improper, and cannot be sustained because Stevens does not disclose “sending an inquire message from the computer to the communication device that indicates data associated with the computer from

a network enabled inquiring device is sought to be exchanged with the communication device,” as recited in claim 38 (App. Br. 11). Appellants, thus, argue that what Stevens discloses (in paragraph 64, on which the Examiner relies) is “users transmitting messages to one another directly (such as with text or email),” i.e., direct communication, as opposed to the communication being sent and received by the organization’s computer, as called for in claim 38 (*id.*).

Responding to Appellants’ argument in the Answer, the Examiner notes that the claim language only pertains to the sending of a message from a computer to a device, and the Examiner cites paragraphs 48, 52, and 62–63 of Stevens as disclosing that “the system can be implemented via a common server that performs the matching and communicating” and, therefore, disclosing that the communication is not direct (Ans. 4).

Appellants do not address these portions of Stevens either in their Appeal Brief or Reply Brief. Nor do Appellants otherwise provide any argument to demonstrate that the Examiner’s findings are unreasonable or unsupported.

Therefore, we sustain the Examiner’s rejection of claim 38 under 35 U.S.C. § 102(e). *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 appellant, looking for [patentable] distinctions over the prior art.”).

Obviousness

Independent Claim 1 and Dependent Claims 4–8, 10–16, 18, and 39–55

We are persuaded by Appellants’ argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a) at least because

Stevens, on which the Examiner relies, does not disclose or suggest that the inquiring individual initiates identification of a target individual, i.e.,

identifying a target individual located in a specific geographic area with a network enabled inquiring device that is able to communicate over a network and associated with an inquiring individual in response to the inquiring individual, the network enabled inquiring device identifying the specific geographic area of the target individual, where the specific geographic area is in visual proximity of the network enabled inquiring device[.]

as recited in claim 1 (App. Br. 12–13).

The Examiner ostensibly does not contend that the cited references disclose or suggest that the inquiring individual initiates identifying a target; instead, the Examiner finds that “claim 1 does not positively claim that the inquiring individual identifies the target, only that the inquiring individual performs some act which leads to the identification” (Ans. 5). We disagree.

In our view, a person of ordinary skill in the art, on reviewing the Specification, would reasonably understand what is claimed in claim 1, namely that the inquiring individual initiates identifying a target, and in response to this identification, i.e., “in response to the inquiring individual,” the specific geographic area of the target individual is identified, where the geographic area is in visual proximity of the inquiring individual’s network enabled inquiring device.

The Examiner has not established on this record that Stevens, Mayer, and/or Jacoby, individually or in combination, meet the claim language, as properly construed. Therefore, we do not sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a). For the same reason, we also do not sustain the Examiner’s rejection of dependent claims 4–8, 10–16, 18, and 39–55. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent

claims are nonobvious if the independent claims from which they depend are nonobvious”).

Dependent Claims 2, 3, and 17

Claims 2, 3, and 17 depend, directly or indirectly, from independent claim 1. The rejections of these dependent claims does not cure the deficiency in the rejection of claim 1. Therefore, we do not sustain the rejections of dependent claims 2, 3, and 17 under 35 U.S.C. § 103(a) for the same reasons set forth above with respect to independent claim 1.

Independent Claim 33 and Dependent Claims 34 and 35

Independent claim 33 includes language substantially similar to the language of claim 1, and stand rejected based on the same rationale, with respect to Stevens, applied with respect to claim 1. Therefore, we do not sustain the Examiner’s rejection under 35 U.S.C. § 103(a) of independent claim 33, and claims 34 and 35, which depend therefrom, for the same reasons set forth above with respect to independent claim 1.

DECISION

The Examiner’s rejection of claims 1–8, 10–18, and 39–55 under 35 U.S.C. § 112, second paragraph, is affirmed.

The Examiner’s rejection of claims 1–8, 10–18, 33–35, and 38–55 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejection of claim 38 under 35 U.S.C. § 102(e) is affirmed.

The Examiner’s rejections of claims 1–8, 10–18, 33–35, and 39–55 under 35 U.S.C. § 103(a) are reversed.

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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