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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN REDFERN, MANISH MOHAN SHARMA, and
KIRAN PRASAD

Appeal 2017-005941
Application 13/673,473¹
Technology Center 2400

Before ST. JOHN COURTENAY III, ERIC S. FRAHM, and
SCOTT E. BAIN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–3 and 5–22, which constitute all claims pending in the application. Claim 4 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as LinkedIn Corporation. App. Br. 2.

STATEMENT OF THE CASE

The Claimed Invention

The claimed invention relates to mobile communication, and specifically, to improving a mobile social network system utilizing GPS, integrated calendar functions, and social graphs. Spec. ¶¶ 1–2, 5–8. Claims 1, 9, and 19 are independent. Claim 1 is illustrative of the invention and the subject matter of the appeal, and reads as follows:

1. A mobile communications device comprising:
 - a computer processor configured with a calendar application and calendar database; and
 - an application programming interface coupled to the computer processor;wherein one or more of the computer processor and the application programming interface are configured to:
 - identify an event in the calendar database that is associated with a first person;
 - transmit a request to one or more of a social network server and a business network server, the request comprising an identification of the first person and a user of the mobile communication device; and
 - receive from one or more of the social network server and the business network server information relating to the first person and the user of the mobile communication device;wherein the event is identified as a function of a calendar date, a time of day, a calendar date of the event, a time of the event, a location of the mobile communication device, and a location of the event;
- wherein the computer processor is configured to transmit the request to the social network server or the business network server when the calendar date equals the calendar date of the event, the time of day approaches the time of the event, and the

location of the mobile communication device approaches the location of the event;

wherein the calendar database comprises one or more upcoming events for the user of the mobile communication device; and

wherein the social network server and the business network server comprise common connections derived from a social graph between the first person and the user of the mobile communications device.

App. Br. 23 (Claims App.).

Prior Art

The Examiner relies upon the following prior art:

Patel et al.	US 2007/0249410 A1	Oct. 25, 2007
Scott et al.	US 2010/0222033 A1	Sept. 2, 2010
Annambhotla et al.	US 2011/0205850 A1	Aug. 25, 2011
Devecka	US 2012/0290977 A1	Nov. 15, 2012

The Rejections on Appeal

Claims 1–3 and 5–22 are rejected under 35 U.S.C. § 101 as directed to ineligible subject matter. Final Act. 2–5.

Claims 1–3, 5–8, and 19–22 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Scott et al. (“Scott”), Devecka, and Annambhotla et al. (“Annambhotla”). Final Act. 5–31.

Claims 9–12 and 14–17 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Scott and Devecka. Final Act. 32–44.

Claims 13 and 18 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Scott, Devecka, and Patel et al. (“Patel”). Final Act. 44–48

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments presented in this appeal. Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). With respect to the ineligible subject matter rejection, Appellants' arguments persuade us the Examiner erred. With respect to the obviousness rejections, however, we are not persuaded of error, and we adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner's Answer. We provide the following for highlighting and emphasis.

Rejection Under 35 U.S.C. § 101

The Examiner finds the claims are directed to “managing human activities,” and therefore concludes the claims are directed to ineligible subject matter. Final Act. 3. The Examiner characterizes the invention as being “about event calendar software” and specifically, the abstract idea of “how often to receive events and [] display these events.” Final Act. 2–3. The Examiner further finds the invention involves additional activities of “organiz[ing], stor[ing], and transmit[ing] information and using rules,” but these activities do not add significantly more to the “abstract idea” to render it patent eligible. Final Act. 3.; *see also* Ans. 4–5.

Appellants argue the Examiner has oversimplified the claims, and that the invention is not abstract just because it implicates human (*real world*) activities. App. Br. 10; *see also id.* at 11–15. Appellants contend the “calendar” function emphasized by the Examiner is only one aspect of the claimed invention, and it is the unique use of global positioning, timing,

social graphs, and other functions that constitute the core of the invention. *Id.*; Reply 2. Thus, according to Appellants, the invention satisfies the first step of *Alice* and we need not reach the second step.² We are persuaded by Appellants' argument.

Section 101 of the Patent Act provides “[w]hoever 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. The Supreme Court has long held that this provision contains an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107 (2013)). The Court has set forth a two-part inquiry to determine whether this exception applies. First, we must “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 134 S. Ct. at 2355. Second, if the claim is directed to one of those patent-ineligible concepts, we 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.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1297 (2012)). Put differently, we must search the claims for an “inventive concept,” that is, “an element or combination of elements that is ‘sufficient

² Appellants further argue that the claimed invention would satisfy the second step of *Alice*, based on concrete, non-generic computing actions required by the claims. App. Br. 11. We need not reach this argument.

to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1294).

Regarding step one of the *Alice* analysis, we are persuaded by Appellants’ argument that claim 1 is directed to concrete, non-abstract features of a “mobile communication device.”³ App. Br. 23; Spec. ¶¶ 6–9. The Specification describes the programming of APIs (applications program interfaces) on a mobile device to utilize the device’s GPS (global positioning system) in specific ways based on the *physical location* of the device and concrete inputs relating to calendar application and other applications on the device, include social media applications. *See, e.g.*, Spec. ¶¶ 8–13; *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (claims are to be “considered in light of the specification” to determine whether they are “directed to excluded subject matter”) (citing *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). The invention further includes triggering particular actions on the mobile device when the device (and, presumably, its user) is in geographic proximity to the location of certain events or other (user’s) devices.

The invention further is directed to improving the functioning of the calendar/social media interface by “deriv[ing] common connections . . . from a social graph between [a person and] the user of the mobile communications device.” App. Br. 23.

³ Appellants and the Examiner group the claims together for purposes of the rejection under 35 U.S.C. § 101, and we choose claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We recognize that, at a high level, the claimed invention involves concepts of organization and planning. As the Supreme Court has cautioned, however, “an invention is not . . . rendered ineligible for patent simply because it involves an abstract concept.” *Alice Corp.*, 134 S.Ct. at 2354 (emphasis added). Rather, we must “tread carefully in construing [the abstract idea] exclusionary principle lest it swallow all of patent law.” *Id.*; see also *Enfish, LLC*, 822 F.3d at 1334–1335 (Although “[t]he Supreme Court has not established a definitive rule to determine what constitutes an ‘abstract idea’ sufficient to satisfy the first step of the *Mayo/Alice* inquiry . . . the first step in the inquiry is a meaningful one.”).

For the foregoing reasons, we do not sustain the rejection of claims 1–3 and 5–22 as directed to ineligible subject matter.

Rejections Under 35 U.S.C. § 103

Appellants argue the Examiner erred in finding the prior art teaches or suggests transmitting to a mobile device information about “another person” as the time and location for a common event nears, as recited in claim 1. App. Br. 19. Specifically, Appellants argue the Examiner erred in relying on Scott and Annambhotla for the teaching “that both another person and [the user of the mobile device] are scheduled for the same event.” Appellants’ arguments do not persuade us of error.

First, as the Examiner observes, claim 1 does not recite “another person and [the user of the mobile device] are scheduled for the same event.” Ans. 22. Rather, claim 1 recites an event “in the calendar database that is associated with a first person.” App. Br. 23. As the Examiner finds, Scott teaches such an event: “[an] advertisement . . . for a cake of the month

club [is presented] because this corresponds with Sally’s interest in cakes, and it is provided along with a helpful reminder that Sally’s birthday [as denoted in the calendar database] is approaching on October 14th.” Scott ¶ 28; *see also* Scott ¶¶ 27–30; Ans. 22.

As the Examiner further finds, Annambhotla teaches tracking a user’s geographic movement, tracking a calendar event, and identifying when the user is moving toward the location of the event. Ans. 21; Annambhotla Figs. 2–3, ¶¶ 7, 29, 44. Devecka, in turn, teaches the use of a social graph in analyzing communications history or connections. Final Act. 11–12 (citing Devecka ¶¶ 138, 154); *see also* Devecka ¶ 170.

Appellants’ arguments do not explain how the Examiner erred in finding the combination of references teaches or suggests the elements of claim 1. To the extent Appellants allege deficiencies in the references, App. Br. 20, these alleged deficiencies focus on individual references and fail to take account of the combination. *See, e.g., In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”).

Appellants also briefly argue that there is “no need or logical reason” to combine Scott with Annambhotla. App. Br. 20. As the Examiner finds, however, both references are directed to improving calendar functionality based on up to date information. Ans. 21. Appellants do not explain why the Examiner erred in finding one of ordinary skill would be motivated to combine the notification features of Scott with the location tracking of Annambhotla. *Id.*; Final Act. 10–11. Nor do Appellants demonstrate combining the features would have been “uniquely challenging or difficult

for one of ordinary skill in the art.” *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR Int’l Co.*, 550 U.S. at 418–19).

Accordingly, we sustain the Examiner’s obviousness rejection of claim 1.

Of the remaining claims, only independent claim 9 is argued separately (albeit briefly).⁴ Appellants contend the Examiner erred in rejecting claim 9 for reasons similar to claim 1, and also because Devecka fails to teach “common connections derived from a social graph.” App. Br. 21. Claim 9, however, does not require a social graph or any particular social connections. Claim 9 is a device claim, in which the device is “configured to” perform certain functions, including “receive . . . information” and “receive an action indicator.” App. Br. 25. The Examiner finds such elements in the combination of Scott and Devecka. Final Act. 32–36. Appellants’ argument does not explain how the combination fails to teach or suggest the elements of claim 9, and therefore is not persuasive of error. *See Merck & Co.*, 800 F.2d at 1097.

Thus, for the foregoing reasons, we sustain the obviousness rejections of claims 2, 3, and 5–22.

⁴ *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We reverse the Examiner's decision rejecting claims 1–3 and 5–22 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1–3 and 5–22 under pre-AIA 35 U.S.C. § 103(a).

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED