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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STUART W. AITKEN, WARREN LEE,
KAUSHIK SUBRAMANIAN, and JONATHAN QUINN

Appeal 2017-006001¹
Application 11/560,930²
Technology Center 3600

Before NINA L. MEDLOCK, PHILIP J. HOFFMANN, and
BRUCE T. WIEDER, *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 and 10–24. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed November 29, 2016) and Reply Brief (“Reply Br.,” filed March 6, 2017), and the Examiner’s Answer (“Ans.,” mailed January 13, 2017) and Final Office Action (“Final Act.,” mailed June 30, 2016).

² Appellants identify Safeway Inc. as the real party in interest. App. Br. 3.

CLAIMED INVENTION

Appellants' claimed invention "relates to the creation of customized nutritional purchase information, and more specifically to the creation of nutritional reports based upon purchases at a local store or online store made while using a loyalty card" (Spec. ¶ 4).

Claims 1, 7, and 13 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computerized method for managing loyalty card data, the method comprising:
 - providing a database coupled to a central terminal;
 - storing in the database a plurality of records comprising nutritional information related to products available for purchase by a consumer using a loyalty profile, wherein the loyalty profile is associated with the consumer and wherein the nutritional information comprises at least one nutritional element of the products available for purchase;
 - upon recognition of the loyalty profile, associating in the database the nutritional information with products purchased by the consumer using the loyalty profile; and
 - displaying nutritional information associated with the products purchased by the consumer using the loyalty profile, wherein the displayed nutritional information comprises a quantity of the at least one nutritional element aggregated over the historical time range, wherein the nutritional element and the historical time range are selectable at least by the consumer.

REJECTION

Claims 1–8 and 10–24 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

Appellants argue claims 1–8 and 10–24 as a group (App. Br. 9–28). We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. 37 C.F.R. §41.37(c)(1)(iv).

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). These transformative elements must supply an “inventive concept” that ensures the patent amounts to “significantly more than a patent upon the [ineligible concept] itself.” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). Claim limitations

that recite “conventional, routine and well-understood applications in the art” are insufficient to “supply an inventive concept.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1378 (Fed. Cir. 2015).

In rejecting the pending claims under § 101, the Examiner determined that the claims are directed to “nutritional management and meal planning based on a user profile and displaying nutritional information over a historical time range,” which the Examiner concluded is an idea of itself and/or a method of organizing human activity, and, therefore, an abstract idea (Final Act. 3–4 (citing *DietGoal Innovations LLC v. Bravo Media LLC*, 33 F. Supp. 3d 271, 283 (SDNY 2014); *SmartGene, Inc. v. Advanced Biological Labs, S.A.*, 555 F. App’x 950 (Fed. Cir. 2014); and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375–76 (Fed. Cir. 2011)). The Examiner also determined that, viewed as a whole, the additional claim elements, i.e., “storing information in a database,” “associating information in a database,” and “displaying nutritional information,” are mere generic computer functions, and do not provide meaningful limitations to transform the abstract idea into a patent-eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself (*id.*).

Claim 1, reproduced above, is directed to a method for managing loyalty card data, and recites that the method comprises (1) providing a database; (2) storing, in the database, a plurality of records comprising nutritional information related to products available for purchase by a consumer using a loyalty profile; (3) upon recognizing the loyalty profile, associating, in the database, the nutritional information with products purchased by the consumer using the loyalty profile; and (4) displaying the nutritional information associated with the products purchased by the

consumer using the loyalty profile in a format selectable by the user. Claim 1, thus, involves nothing more than collecting data (product nutritional information and product purchase information); analyzing the data (associating the nutritional and product purchase information); and displaying the results of the collection and analysis — without any asserted inventive technology for performing these functions.

Addressing step one of the *Mayo/Alice* framework, Appellants assert that the claims are not directed to an abstract idea because the claims are different from the claims found patent-ineligible in *DietGoal*, *SmartGene*, and *CyberSource* (App. Br. 9–18). The Federal Circuit, however, has consistently held that collecting and analyzing information, without more, is an abstract idea, and that merely presenting the results of the abstract process of collecting and analyzing information is abstract as an ancillary part of the collection and analysis. *See, e.g., Elec. Power Grp. LLC v. Alstom, S.A.*, 830 F.3d 1350 (Fed. Cir. 2016).

For example, in *Clarilogic, Inc. v. FormFree Holdings Corp.*, 681 F. App'x 950, 954 (Fed. Cir. 2017), the Federal Circuit concluded that claims reciting “collecting financial data, transforming the data into a desired format, validating the data by ‘applying an algorithm engine,’ analyzing certain exceptions, and generating a report” were directed to an abstract idea, explaining that “a method for collection, analysis, and generation of information reports, where the claims are not limited to how the collected information is analyzed or reformed, is the height of abstraction.” *Id.* And in *Electric Power*, where the method claims at issue were directed to performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data,

and displaying the results, *Elec. Power Grp.*, 830 F.3d at 1351–52, the court held that the claims were directed to an abstract idea because “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354.

Similarly here, we find that claim 1 involves nothing more than collecting nutritional information associated with products available for purchase by a consumer and information identifying the products purchased by the consumer; analyzing the data; and displaying the results — activities squarely within the realm of abstract ideas. *See id.* at 1353–54 (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas).

Appellants do not assert that claim 1 (or any other claim, for that matter) involves a new technique for analyzing and/or displaying information. Nor is there any indication in the Specification that the 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. In fact, the Specification discloses just the opposite, i.e., that the claimed invention may be implemented using only generic computer components (*see, e.g.*, Spec. ¶¶ 43–45), which is not enough for patent-eligibility. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter

Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

Appellants’ further argument that the Examiner improperly reduces the claims to a high level of abstraction untethered from the entirety of the claim language (App. Br. 18–19; *see also* Reply Br. 3-5) is likewise unpersuasive. Although Appellants ostensibly contend otherwise, the Examiner’s formulation of the abstract idea need not copy the claim language. Instead, the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

Here, it is clear from a fair reading of the Specification that the claimed invention is directed to the creation of nutritional reports based on consumer purchases made while using a loyalty card, i.e., storing, in a database, nutritional information related to products available for purchase using a loyalty card profile; associating, in the database, the nutritional information with products purchased by a consumer using a loyalty profile; and displaying nutritional information associated with the loyalty profile where the displayed nutritional element(s) and historical time range are selectable by the consumer (*see, e.g.*, Spec. ¶¶ 4, 7). As such, we see no legal difficulty with the Examiner’s determination that the claims are

directed to “nutritional management and meal planning based on a user profile[,] and displaying nutritional information over a historical time range” (Final Act. 3). That claim 1 includes more words than the phrase the Examiner used to articulate the abstract idea to which the claim is directed is an insufficient basis to persuasively argue that the claim language has been mischaracterized or that the Examiner has otherwise failed to consider all of the limitations of the claim. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”).

Turning to step two of the *Mayo/Alice* framework, Appellants argue that the Examiner has conflated performance by a general purpose computer with being well-understood, routine, and conventional, and that the Examiner has failed to present sufficient evidence to rebut Appellants’ showing that the claims include an inventive concept other than what is well-understood, routine, and conventional in the field (App. Br. 22–27).

Yet, the difficulty with Appellants’ argument is that the features of claim 1 that Appellants maintain are not well-understood, routine, and conventional are part of the abstract idea;³ they are not *additional* elements

³ I.e., that the information stored in the database is nutritional information that relates to products available for purchase by a consumer using a loyalty profile; that the nutritional information associated with the loyalty profile is nutritional information associated with products purchased by the consumer using the loyalty profile; that the association of the loyalty profile with

to be considered when determining whether the additional elements or a combination of elements amounts to significantly more than the judicial exception. *See BSG Tech. LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”).

Appellants emphasize, for example, that the nutritional information associated with the loyalty profile is nutritional information associated with products purchased by the consumer using the loyalty profile, and “not just any nutritional information” (*see, e.g.*, App. Br. 21). But, limiting a process of collecting and analyzing information to particular content does not make the collection and analysis any less abstract. *See Elec. Power Grp.*, 830 F.3d at 1353 (“Information, as such, is an intangible. Accordingly, we have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.”) (citations omitted).

The Examiner determined here, as described above, that the additional claim elements, i.e., “storing information in a database,” “associating information in a database,” and “displaying nutritional information,” are mere generic computer functions and do not provide meaningful limitations to transform the abstract idea into a patent-eligible application of the abstract

nutritional information is accomplished upon recognition of the loyalty profile; and that the displayed nutritional information comprises a quantity of at least one nutritional element aggregated over a historical time range, where “the nutritional element and the historical time range are selectable at least by the consumer” (*see* App. Br. 18).

idea such that the claims amount to significantly more than the abstract idea itself (*id.* at 3–4). Appellants cannot reasonably contend that there is a genuine issue of material fact regarding patent-eligibility, where, as here, there is nothing in the Specification to indicate that the operations recited in claim 1 require any specialized hardware or inventive computer components or that the claimed invention is implemented using other than generic computer components to perform generic computer functions, i.e., storing, processing, and displaying information. Indeed, the Federal Circuit, in accordance with *Alice*, has “repeatedly recognized the absence of a genuine dispute as to eligibility” where claims have been defended as involving an inventive concept based “merely on the idea of using existing computers or the Internet to carry out conventional processes, with no alteration of computer functionality.” *Berkheimer v. HP, Inc.*, 890 F.3d 1369, 1373 (Fed. Cir. 2018) (Moore, J., concurring) (citations omitted); *see also BSG Tech.*, 899 F.3d at 1291 (“BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept.”).

Pointing to Federal Circuit’s decision in *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016), Appellants assert that “the ability of the elements of a claim to be processed by general-purpose computers does not show that the claimed elements were previously used, i.e., were well-understood, routine, and conventional” (App. Br. 23). We agree. However, it also is clear that the recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.

See, e.g., DDR Holdings, 773 F.3d at 1256 (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

Claim 1 of the ’576 patent,⁴ at issue in *McRO*, is directed to a method for automatically animating the lip synchronization and facial expressions of three-dimensional animated characters, and recites that the method comprises, *inter alia*, “obtaining a first set of rules that define output morph weight set stream as a function of phoneme sequence and time of said phoneme sequence.” *McRO*, 837 F.3d at 1307–08. The Federal Circuit determined that the claim, when considered as a whole, is directed to a technological improvement over existing, manual 3–D animation techniques, and uses limited rules in a process specifically designed to achieve an improved technological result relative to conventional industry practice. *Id.* at 1316. As such, the court determined that the claim is not directed to an abstract idea, and is patent-eligible under 35 U.S.C. § 101. *Id.*

Appellants assert here that claim 1 “combine[s] the use of a loyalty profile containing loyalty information with the nutritional information of products purchased by the consumer associated with the loyalty profile,” and that “[t]he particular way that the combination of this information is useful to the consumer is recited in the claim[], namely, ‘the nutritional element and the historical time range are selectable at least by the consumer’” (App. Br. 27). Appellants, thus, maintain that the computer-implemented functions that “provide this useful information improve another technical field, namely, nutritional management and meal planning by the consumer” (*id.*

⁴ U.S. Patent No. 6,307,576, issued October 23, 2001.

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at 28). But, we are not persuaded that nutritional management and meal planning is a technical field. Nor are we persuaded that displaying customized nutritional information is a technological improvement.

We are not persuaded, on the present record, that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner's rejection of claim 1, and claims 2–8 and 10–24, which fall with claim 1.

DECISION

The Examiner's rejection of claims 1–8 and 10–24 under 35 U.S.C. § 101 is affirmed.

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