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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HELLEN DAVIS¹

Appeal 2017-006336
Application 13/151,407
Technology Center 3700

Before JENNIFER D. BAHR, JAMES P. CALVE, and
BRANDON J. WARNER, *Administrative Patent Judges*.

CALVE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Final Office Action rejecting claims 1–14. Br. 3. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellant is identified as the real party in interest. Br. 3.

CLAIMED SUBJECT MATTER

Claims 1, 9, and 14 are independent. Claim 1 is reproduced below.

1. A method to link a self-assessment and 3rd party evaluations to performance or personal development through eLearning and online training recommendations as well as coaching proposals and advice, capable of execution on a computer, comprising the steps of:
 - assigning a password for a respondent;
 - initializing a set of permissions relative to the password;
 - providing an evaluation instrument which gauges an individual's current core competency level based on self-assessment and the input from the assessment of 3rd party respondents in the areas of work, social and family relationships, and considers future desired competency levels;
 - determining or measuring the gaps in perception between self and 3rd party assessment regarding same;
 - providing recommendations, after determinations are made, for the appropriate method or a combination of methods selected from a group consisting of:
 - further data gathering,
 - eLearning suggestions,
 - online training references, and
 - coaching suitability with regards to a particular job, an individual's performance or behavior with regards to their competency for a particular job, or an individual boss's performance with regards to a particular job to a respondent after verification of the password;
 - evaluating a team[']s performance and individual team member's performance as the performances relates to the process or system;
 - receiving responses from the respondent to the evaluation instrument;
 - processing the responses into an evaluation report;

generating the evaluation report containing one or more suggestions with respect to behavior with complementary training and/or eLearning recommendations for each of the suggestions; and

sending the evaluation report to one or more locations authorized by the set of permissions associated with the password; and

providing the appropriate online training, eLearning, or coaching recommendations.

REJECTIONS²

Claims 1–14 are rejected as being directed to patent-ineligible subject matter under a judicial exception to 35 U.S.C. § 101.

Claims 1 and 2 are rejected under 35 U.S.C. § 103(a) as unpatentable over Roecker (US 2009/0276294 A1, pub. Nov. 5, 2009) and Schmidt (US 2009/0011395 A1, pub. Jan. 8, 2009).

Claims 3–9, 13, and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Roecker, Schmidt, and Fox (US 2011/0047224 A1, pub. Feb. 24, 2011).

Claims 10–12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Roecker, Schmidt, Fox, and Levin (US 2003/0101091 A1, pub. May 29, 2003).

² We consider the Examiner to have withdrawn the rejection of claims 1–8 under 35 U.S.C. § 112, first paragraph, for lack of a written description of the limitation “determining an individual’s current core competency level” following Appellant’s Amendment to delete that limitation from claim 1. *See* Amendment, filed Jan. 31, 2016; *see also* Adv. Action, mailed Feb. 17, 2016, continuation sheet (stating that the rejections under 35 U.S.C. §§ 101 and 103(a) are maintained); Ans. 2–29 (listing the grounds of rejection as only those under 35 U.S.C. §§ 101 and 103(a)).

ANALYSIS

Claims 1–14 Under 35 U.S.C. § 101

Appellant argues claims 1–14 as a group. Appeal Br. 14–18. We select claim 1 as representative, with claims 2–14 standing or falling with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

The patent laws provide that “[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. However, “this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted).

In *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, the Supreme Court “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*, 573 U.S. at 217 (citing *Mayo*, 566 U.S. at 77). First, we determine whether the claims are directed to such a patent-ineligible concept. *Id.* If so, we consider the claim elements individually and as an ordered combination to determine whether additional elements transform the claims into a patent-eligible application. *Id.* This search for an inventive concept in the second step seeks an element, or a combination of elements “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* at 217–218.

On January 7, 2019, the United States Patent and Trademark Office published the 2019 Revised Patent Subject Matter Eligibility Guidance in the Federal Register, in which the Office revised its examination procedure. 84 Fed. Reg. 50 (“Revised Guidance”). To determine if a claim recites an abstract idea under Prong One of the Revised Guidance, Examiners must identify specific limitations in the claim (individually or in combination) that the Examiner believes recite an abstract idea, and determine whether the identified limitation(s) falls within the subject matter groupings set forth in Section I of the Revised Guidance. *Id.* at 54 (III. A. Revised Step 2A).

The subject matter groupings include mathematical concepts, certain methods of organizing human activity, and mental processes. *Id.* at 52. If the claim recites a judicial exception, the Examiner must evaluate whether the judicial exception is integrated into a practical application under Prong Two. *Id.* at 54. If the exception is so integrated, the claim is not directed to a judicial exception and is patent eligible and no further analysis is needed. *Id.* However, if the additional elements do not integrate the exception into a practical application, then the claim is directed to the judicial exception and further analysis is required under Step 2B to determine if the claim recites an inventive concept. *Id.*

Step One, Prong One: Do the Claims Recite An Abstract Idea?

The Examiner determines that claim 1 recites an abstract idea. The Examiner determines that claim 1 recites a method of organizing human activity through employee evaluations and subsequent development/training. Final Act. 3; Ans. 2–3. The Examiner also determines that claim 1 recites a mental process that can be performed in the human mind or by pen and paper. Ans. 2–5. As discussed below, we agree with both determinations.

Organizing Human Activity Via Employee Evaluation and Development

The Examiner determines claim 1 is directed to “an abstract idea of linking self-assessment and 3rd party evaluations to performance or personal development” by reciting “providing an evaluation instrument which gauges an individual’s current core competency level based on a self-assessment and the input from the assessments of 3rd party respondents in the areas of work and social and family relationships . . .,” “determining or measuring the gaps in perception between self and 3rd party assessment regarding the same,” “providing recommendations, after determinations are made, for the appropriate method . . . of further data gathering, eLearning suggestions, online training references, and coaching suitability with regards to a particular job . . .,” “evaluating a team’s performance and individual team member’s performance . . .,” “receiving responses from the respondent to the evaluation instrument,” “processing the responses into an evaluation report,” and “generating the evaluation report containing one or more suggestions with respect to behavior with complementary training and/or eLearning recommendations for each of the suggestions,” and “providing the appropriate online training, eLearning, or coaching recommendations.” Final Act. 3–4; Ans. 2–3. The Examiner determines these “limitations are akin to a longstanding human organizing activity which was at issue in Alice Corp and has been identified . . . to be an abstract idea.” Final Act. 4.

The Revised Guidance provides that “[c]ertain methods of organizing human activity” including “managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions” are abstract ideas. 84 Fed. Reg. 50, 52. We find that claim 1 recites such an abstract idea of organizing human activity.

Claim 1 recites steps of organizing human activity by “providing an evaluation instrument which gauges an individual’s current core competency level based on self-assessment and the input from the assessment of 3rd party respondents in the areas of work, social and family relationships, and considers future desired competency levels.” Thus, the claim is directed to organizing employee evaluations through self-assessment and evaluations of others in work, social, and family spheres of activity. Final Act. 3; Ans. 2.

Claim 1 recites steps that determine or measure gaps between a one’s self-assessment and 3rd party assessments “regarding same.” The analysis or information is used for “providing recommendations, after determinations are made, for the appropriate method or a combination of methods selected from a group consisting of: further data gathering, eLearning suggestions, online training references, and coaching suitability.” Thus, human activity in the areas of education, training, and learning is organized based on the self-assessments and evaluations. The recommended training can involve an organized human activity of coaching the individual. Final Act. 3; Ans. 2.

Claim 1 recites “evaluating a team[’]s performance and individual team member’s performance” by receiving and processing responses to the evaluations. Reports are generated with suggestions for the “behavior with complementary training and/or eLearning recommendations for each of the suggestions” and an evaluation report is sent to authorized locations for online training, eLearning, and coaching. These limitations are directed to evaluating the activity of teams of individuals and organizing training, learning, and coaching activities, which is one certain method of organizing human activity under the Revised Guidance, and is thus an abstract idea. *See* Final Act. 3–4; Ans. 2–3.

Mental Processes

The Examiner also finds that claim 1 recites a method that “can be practiced as a mental process performed in the human mind or by pen and paper.” Ans. 3. In particular, the Examiner finds that the steps of providing an evaluation instrument to measure an individual’s core competency level based on self-assessments and assessments from 3rd party respondents for work, social, and family relationships and determining and measuring gaps in perception of self and 3rd party assessments are interpreted as comparing information, which involves a mental process. *Id.* at 3–4. The Examiner also finds that recommendations for data gathering, eLearning suggestions, online training references, and coaching suitability for a job based on an individual’s performance and behavior are mental processes that compare new and stored information using rules to identify options. *Id.* at 4–5.

The Revised Guidance provides that “[m]ental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion)” are abstract ideas. Revised Guidance, 84 Fed. Reg. 50, 52. We find that claim 1’s employee evaluation process recites a mental process and therefore is an abstract idea under the Revised Guidance.

For example, claim 1 recites “providing an evaluation instrument which gauges an individual’s current core competency level based on self-assessment and the input from the assessment of 3rd party respondents in the areas of work, social and family relationships” to “determin[e] or measur[e] the gaps in perception between self and 3rd party assessment.” These steps of self-assessment and 3rd party evaluations encompass mental processes that people routinely perform in their minds before they may record their mental assessments in an evaluation or assessment. *See* Ans. 3.

The further steps of “determining or measuring the gaps in perception between self and 3rd party assessment” and “providing recommendations, after determinations are made, for the appropriate method or a combination of methods” that include “further data gathering, eLearning suggestions, online training references, and coaching suitability” involve mental steps and processes that supervisors, human resources administrators, trainers, and others routinely undertake when evaluating employees and others to identify areas for improvement and then to recommend appropriate education and training experiences for the employee to pursue. *See id.* at 3–4.

Similar mental steps and processes are recited in the claimed steps of “evaluating a team[’]s performance and individual member’s performance” by “receiving responses from the respondent to the evaluation instrument” and “processing the responses into an evaluation report.” Managers, coaches, and others routinely evaluate the team performance of a group of individuals as well as individual performance of members of the team as team members to determine how to improve that performance with training, learning, or coaching recommendations as recited in claim 1. *See id.* at 4–5.

Appellant does not dispute that claim 1 recites a method of organizing human activity and mental processes. Instead, Appellant argues the claims are tied to a particular machine (a computer) as required by *Bilski*. Br. 15–16. Appellant also argues that the claimed method is not an abstract idea because it is an integrated method for an individual’s development in a web-based environment, rather than a long-standing practice. *See id.* at 17–18.

These arguments concern whether claim 1 recites an integrated application under the Revised Guidance. We address that issue next.

Step One, Prong Two: Does Claim 1 Recite an Integrated Application

Under Step One, Prong Two of the Revised Guidance, having found that claim 1 recites abstract ideas of organizing human activity and mental processes, we next consider whether claim 1 recites additional elements that integrate the exception into a practical application. 84 Fed. Reg. 50, 54. “A claim that integrates a judicial exception into a practical application will apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *Id.*

We agree with the Examiner’s findings that claim 1 does not recite additional limitations sufficient to elevate the abstract ideas of organizing human activity and mental processes to a patent-eligible application. In particular, we agree with the Examiner that reciting a generic computer and its typical components, a password, and set of permissions for a respondent, are merely instructions to perform the abstract idea on the generic computer and therefore such steps are insufficient. Final Act. 4; Ans. 31.

In *Alice*, the Supreme Court addressed this issue and held that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea ‘while adding the words “apply it”’ is not enough for patent eligibility.” *Alice*, 573 U.S. at 223. Because claim 1’s recitation of a computer amounts to a mere instruction to implement the abstract idea on a computer, the addition of a computer cannot impart patent eligibility. *Id.* Thus, claim 1’s mere recital of a computer for performing the claimed abstract concept does not integrate the judicial exception into a practical application. Indeed, claim 1 recites a method “capable of execution on a computer” in the preamble.

Similar analysis and reasoning applies to Appellant’s argument that the claims recite “[a]ll data is provided in a web-based environment through real time and instantaneous distribution of appropriate recommendations” and responses are accepted on the web site and processed into a report with online learning (eLearning), coaching, and training recommendations. Br. 17–18. Once again, *Alice* provides guidance on this issue by holding that limiting the use of an abstract idea to a particular technological environment does not provide the sort of application that transforms an abstract idea into a patent-eligible one. *Alice*, 573 U.S. at 223. Therefore, claim 1’s recital of a method that can be implemented on the Internet or as a web-based method also does not integrate the judicial exception into a practical application.

The steps of recording self and third party assessments, extracting and classifying data therefrom to determine gaps, and using that data to make training and coaching recommendations are akin to the activities held to be methods of organizing human activity in *TLI Communications. In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607 (Fed. Cir. 2016). There, the methods of recording and storing digital images and transmitting that data with classification information for further extraction and storage according to the classification information were held to be a method of organizing human activity. *Id.* at 613; *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1286 (Fed. Cir. 2018) (holding that method of presenting summary comparison information based on historical usage data to users to assist them in inputting data as parameters and values to a database was a well-established method of organizing human activity). Such methods of organizing human activity were not considered to be integrated into a practical application sufficient to make them patent eligible.

In *TLI Communications*, the court held that the “mere recitation of concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract idea.” *TLI*, 823 F.3d at 613 (holding that limiting the abstract idea to a particular environment does not make the claims any less abstract). In *TLI*, a “telephone unit,” “server,” “image analysis unit,” and “control unit” did not represent a solution to a “technological problem” sufficient to bring the abstract idea into the realm of patentability. *Id.* In the parlance of the Revised Guidance, the claim did not integrate the abstract idea of organizing human activity into a patent eligible practical application.

In *BSG*, the court held that the claimed method of organizing human usage activity in the form of database usage information did not improve the database functionality. *BSG*, 899 F.3d at 1287–88. Instead, any benefits of increased speed, efficiency, or relevant materials flow from performing the abstract idea on a well-known database structure. *Id.* at 1288.

In *Content Extraction*, claims were “directed, in part, to an abstract idea of ‘collecting data’ despite reciting a scanner and despite the data being from ‘hard copy documents’ collected by an ‘automated digitizing unit.’” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (cited in *BSG*, 899 F.3d at 1286, 1287).³ In *Two-Way Media*, the claims were directed, in part, to the abstract idea of “sending information,” even though the claims concerned “audio/and or visual information” transmitted over a communications network. *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1334, 1337–38 (Fed. Cir. 2017) (cited in *BSG*, 899 F.3d at 1287). Integrations into practical applications were lacking in all of these cases.

³ The claimed surveys can be completed manually on paper. Spec. 4:12–14.

Providing tailored training and learning activities via the Internet also is similar to a method of providing customized web page content to a user as a function of a user's characteristics, which was held to be an abstract idea in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (providing tailored content and information to a user is a well-known and fundamental business practice similar to advertising). The court held that a claimed interactive interface that manages web site content and communicates tailored information to a user based on a profile was a generic computer element and generic web server that simply provides web pages to and communicates with a user's computer. *Id.* at 1370.

Similarly, *In re Salwan*, 681 F. App'x 938 (Fed. Cir. 2017) held that a method of storing, communicating, transferring, and reporting patient health information in a network was an abstract idea that did little more than automate a method of organizing human activity. *Id.* at 941. Like the claimed method in *Salwan*, the claimed evaluation method obtains and then stores, communicates, transfers, and reports employee performance related information regarding the fitness of the employee for particular job category. Even though the claims in *Salwan* allegedly overcame inefficient and costly methods of sending paper patient health information by fax machine or mail, the claimed elements of a generic "network," "computer program," "central server," "device," and "server for processing and transferring" were not sufficient to transform the abstract idea into a patent-eligible invention. *Id.* (holding that other claims reciting video conferencing, patient appointment scheduling, patient registration forms, health-related advertisements, and allowing physicians to create handwritten papers did not change the result).

In these cases, integrations into practical applications were lacking.

Similarly, claims reciting the concept of personal management, resource planning, and forecasting by collecting and analyzing non-business or business information relevant to end users was held to be an abstract idea in *In re Downing*, No. 2018-1795, 2018 WL 6436437, at *4 (Fed. Cir. Dec. 7, 2018) (non-precedential) (citing *Elec. Power Grp. V. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“The advance [the claims] 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. They are therefore directed to an abstract idea.”)).

Essentially, Appellant automated a process for organizing human activity that organizations use to evaluate their employees and recommend training and education activities to make their employees more productive. Such methods also can and have been performed by humans in the human mind of supervisors, managers, coaches, and others.

Here, the claimed method and its steps of providing self-evaluations and third party evaluations can be performed entirely in the human mind and the evaluations merely provide a record of such activity of the human mind. Furthermore, steps of matching learning, training, and coaching activities to an employee’s particular skills based on evaluations can be done entirely in the mind of a supervisor or human resources manager or other person. Thus, the evaluations, reports, and training recommendations all involve processes that can be performed entirely in the human mind. Indeed, the claimed steps represent activities otherwise performed by employees, supervisors, human resources personnel, and others using their mental processes or a computer implementations of such mental processes.

Automation of known mental processes have been held to be abstract ideas. *See SmartGene, Inc. v. Advanced biological Labs., S.A.*, 555 F. App'x 950, 954–55 (Fed. Cir. 2014) (holding that method of selecting a therapeutic treatment regime for a patient by providing patient information, generating a ranked listing of available therapies, and generating advisory information for one or more therapeutic treatment regimes in the ranking was an abstract idea because the computing device contained – like a doctor's mind – a set of expert rules for evaluating and selecting from a stored plurality of different therapeutic treatment regimens and advisory information useful for treating a patient; in other words, every step is a familiar part of the conscious process that doctors can and do perform in their heads) (non-precedential). No integration was found because “[c]laim 1 does no more than call on a “computing device,” with basic functionality for comparing stored and input data and rules, to do what doctors do routinely.” *Id.*

In *CyberSource Corporation v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011), the court held that verifying credit card transactions on the Internet was an abstract idea that can be performed in the human mind. *Id.* at 1372 (holding that applications of human intelligence to the solution of practical problems is not by itself patentable), *cf.* Br. 18 (arguing that steps performed on Internet cannot be performed mentally by a human being).

Alice Step Two: Does Claim 1 Recite an “Inventive Concept”

Having determined that claim 1 recites abstract ideas of organizing human activity and mental processes without integrating those concepts into a practical application, we consider the claim elements individually and as an ordered combination to determine whether additional elements transform the abstract ideas into a patent-eligible application. *Alice*, 573 U.S. at 222.

The Examiner finds that claim 1 recites a generic computer and its typical components that perform routine and conventional functions of implementing instructions of the abstract idea on a computer by collecting and generating data in a development or training environment. Final Act. 4; Ans. 31. Appellant argues the claimed invention is an integrated method of managing a participant's and/or employee's development through individual and team evaluations in a web-based environment. Br. 18. However, we find no indication from Appellant as to any aspect of the claimed method that represents an innovative step, either as an improvement to computer, Internet, or database functionality, or to personnel evaluations and training.

Mere automation of an abstract idea, without improving a technical aspect, does not confer patent eligibility on that process. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (holding that “merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.”); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (holding that “the use of the Internet is not sufficient to save otherwise abstract claims from ineligibility under § 101.”).

“To salvage an otherwise patent-ineligible process, a computer must be integral to the claimed invention, facilitating the process in a way that a person making calculations or computations could not.” *Bancorp Svcs., L.L.C. v. Sun Life Assurance Co. Of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012). Even claims directed to a computer readable medium are treated no differently than process claims that are patent ineligible. *Id.* at 1276, *cf.*, (arguing that claims are patent eligible because they are directed to “computer-readable media claims”).

The court emphasized that “simply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render the claim patent eligible.” *Id.* at 1278 (citation omitted). Therefore, where the claims merely employ computers to track, reconcile, and administer a life insurance policy with a stable value component, the computer simply performs more efficiently what otherwise could be accomplished manually and therefore lacks an inventive concept to make the abstract idea patent-eligible. *Id.* at 1279; *see also SmartGene*, 555 F. App’x at 955 (holding that the claim merely calls on a computer to do nothing that is even arguably an advance in physical implementations of routine mental information-comparison and rule-application processes.”).

“If a claim’s only ‘inventive concept’ is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea.” *BSG Tech*, 899 F.3d at 1290. Here, the term “computer” only appears two times in the Specification to disclose that, “the response vehicle or tool, surveys or other forms to be completed by users could be filled out on paper manually and the results could then be entered into a computer and sent to the web site, or completed on the web-site by the respondents.” Spec. 4:12–14, *see id.* at 9:6–8 (same). The Specification also discloses that recommendations for online training, coaching or eLearning are directly tied to the results of an individual’s or team’s evaluation through a proprietary method of sorting the learning and performance criteria.” *Id.* at 4:4–6. However, claim 1 does not recite any of the proprietary steps or features that may be inventive.

Even considering the limitations of claim 1 as an ordered combination does not change the result. No inventive step inheres in the claim.

Claim 1 recites basic data gathering, processing, analysis, and display of results of analysis steps that do not elevate an abstract idea to a patentable application. Claim 1 simply recites the abstract idea of organizing human activity of personnel evaluation and training that involves mental processes and may be performed by a generic computer. *Alice*, 573 U.S. at 225 (“the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea of intermediated settlement on a generic computer. They do not.”); *see also Bancorp*, 687 F.3d at 1279 (“Using a computer to accelerate an ineligible mental process does not make that process patent-eligible.”).

Accordingly, we sustain the rejection of claims 1–14.

Claims 1 and 2 As Unpatentable Over Roecker and Schmidt

Claim 1

The Examiner relies on Roecker to teach all the features of claim 1 except for “areas of work, social and family relationships, and considers future desired competency levels” and sending an evaluation report to one or more locations. Final Act. 5–10. The Examiner relies on Schmidt to teach these features. *Id.* at 9–11. The Examiner determines that it would have been obvious to combine these elements for predictable results in the career services industry of receiving and quantifying the assessments to align and report identified candidates to job providers. *Id.* at 11–12.

Appellant argues that Roecker and Schmidt fail to enable a skilled artisan to make the claimed subject matter without undue experimentation. Br. 19, 24. Appellant argues that they provide no significant guidance as to the necessary steps to increase an individual’s level of competence through appropriate claimed training or a team concept. *Id.* at 20.

This argument is not persuasive primarily because it is conclusory and fails to address the Examiner’s findings that Roecker and Schmidt teach the claimed features. Roecker and Schmidt teach these features in at least as much detail as the Specification describes them. The Specification discloses that “[a]ll recommendations for online training, coaching, or eLearning are directly tied to the results of an individual’s or team’s evaluation through a proprietary method of sorting the learning and performance criteria includes the step of displaying the recommendation and associated documents on a web site.” Spec. 4:4–7. No details of the proprietary method are disclosed. The Specification also discloses that evaluations, surveys, and forms can be completed manually on paper and entered into a computer. *Id.* at 4:12–14.

Appellant also argues that Roecker does not teach or suggest a method that assesses job eligibility with respect to a “team” concept. Br. 20–22. In addition, Appellant argues that Roecker does not evaluate a team leader or individuals in a team environment and does not use even use the term team to suggest such a limitation. *Id.* at 21–22.

These arguments are not persuasive in view of the Examiner’s finding that Roecker teaches a method for assessing human capital readiness in the field of project management, which involves projects worked on by teams, which are required to complete a project. Ans. 32–33; Final Act. 8. The Examiner also finds that Roecker refers to teams throughout the reference. For example, Roecker describes “team size” as a variable in the specific project information that is provided to a user seeking evaluation of their skills to participate in such projects. Roecker ¶ 49; Ans. 32–33. Roecker also includes team size in its web-based interface used for job descriptions and to evaluate an employee’s skill level. *See* Roecker, Figs. 11, 15.

The Examiner also finds that Roecker evaluates individuals based on assessments of co-workers. Ans. 33 (citing Roecker ¶ 51). The Examiner reasons that the co-worker assessments necessarily involve an employee's work on a project as a member of a team, and evaluation of other members of a team would comprise a team evaluation as claimed. *Id.* We agree.

Roecker further teaches a job description in Figure 16 that rates an individual's ability to support team building. Figures 5 and 6 describe skills that are required of an individual with skill levels involved in team projects such as managing changes to project scope, communicating a project plan, interpersonal skills, and leadership.

The Examiner also points out that Roecker allows an administrator to view all assessments performed of the skill levels of individual employees or the organization, which would include teams, in the organization to design organization training and analyze organizational weaknesses and strengths, which would include team performances, strengths, and weaknesses. Final Act. 8; Ans. 33–34.

The Examiner's interpretation of this limitation to be satisfied by an administrator identifying organizational strengths and weaknesses, which would encompass teams of employees, and skill levels of individuals who form those teams and collectively comprise a team, is reasonable and also is consistent with the Specification and claim language. Claim 1 recites only a step of "evaluating a team[']s performance and individual team member's performance as the performances relates to the process or system." The Brief identifies page two, line 14 of the Specification as the description of this feature. Br. 4. That portion of the Specification states only "behavioral know-how, performance screen, capability and skill set, job proficiency."

Appellant's arguments do not propose a claim construction for this limitation or identify any definition, disclosure, or example of this claimed subject matter to guide our interpretation. *See id.* at 20–22.

We find that Roecker teaches evaluating a team's performance as claimed based on obtaining evaluations and assessments of individuals and their co-workers, i.e., fellow team members who work with them on a team and therefore are familiar with their duty performance and job skills on that team. *See Roecker* ¶ 73. Roecker expressly tracks organization strengths and weaknesses, which would encompass team performances as claimed. *Id.* Roecker also rates skills that involve team performance on projects, e.g., address program issues, analyze program variances, approve closure of projects, assess a program, capture program status, and celebrate program accomplishments. *Id.* Fig. 8.

As Appellant argues, the Specification discloses recommendations for training, coaching, and eLearning that are tied to results of an individual's or team's *self assessment* and/or 3rd party evaluations through a proprietary method of sorting the assessment and evaluation criteria. Br. 21. Roecker teaches self-assessments and evaluations of individuals and their skills in the field of project management involving teams completing projects. Under a broadest reasonable interpretation, assessing the skills and performance of individual team members on team projects provides such assessment and a team evaluation of the teams composed of those individuals as claimed.

Appellant also argues that the claimed methodology is non-existent in a real time environment through a web-based approach. Br. 21. Appellant further argues that Schmidt does not determine an individual's current core competency level or a future desired level. *Id.* at 22–24.

These arguments are not persuasive because Roecker and Schmidt both teach web-based approaches that operate in real time, as the Examiner correctly finds. Roecker teaches that the method can be implemented in software on one or more general purpose computers in any applicable computer language on a computer system that communicates through a worldwide computer network such as the World Wide Web. Roecker ¶ 42. In one embodiment, the functions may be implemented in a web-based system. *Id.* ¶ 43. Furthermore, based on the received and processed user self-assessments and third party evaluations, the method may be linked to particular training programs that can be offered to users who require training in a particular skill or set of skills by offering the training automatically after the assessments are completed. *Id.* ¶ 73; Ans. 39.

Schmidt evaluates core competencies including abilities, skills, knowledge, and job attributes relevant to a selected job type and provides online courses to meet deficiencies. *Id.* Schmidt ¶¶ 2, 52, 56. Appellant's arguments do not address these teachings of Schmidt and therefore do not apprise us of Examiner error in this regard. *See* Br. 22–23. Roecker also teaches core competencies as professional competencies needed to do a job and that require a particular level (value) of skill or ability. Roecker ¶¶ 26, 36, 38, 48, and Figs. 1, 6–8. Individuals are evaluated and gaps are detected between the individual's self-assessment of these skills compared to third party evaluations of these professional competency skills. *Id.* ¶ 72.

Appellant also challenges the Examiner's reason for combining the teachings of Roecker and Schmidt and alleges that the combined teachings would remove Roecker's determining eligibility for a job and frustrate the purpose of Roecker's system. Br. 24–25.

We determine that the Examiner's reason for combining teachings of Roecker and Schmidt is supported by a rational underpinning based on the teachings of both references to evaluate an individual's skills for a job to match individual candidates to particular jobs with a reasonable expectation of success. Final Act. 12; Ans. 37.

Appellant's argument are not persuasive because it misperceives the rejection. The Examiner is not modifying Roecker's method in a manner that eliminates any features of Roecker; rather, the combination supplements the data collection aspects of Roecker that contribute to the eligibility assessment. Schmidt teaches third party assessments by supervisors, friends, peers, and family, which correspond to "areas of work, social and family relationships" as claimed. Final Act. 9–10; *see* Schmidt ¶¶ 32, 33, and Fig. 6. The Examiner also relies on Schmidt to teach sending a report of the evaluations results to others. Final Act. 10; Schmidt ¶¶ 65, 28, 43, Fig. 8. Schmidt teaches that the system determines which job applicants meet the job requirements based on the self-assessments of skills in paragraph 43 and their profiles in paragraph 28 and sends a report to the employer. Schmidt ¶ 65; *see also* Roecker ¶ 71 (a user can generate a report of skills).

The Examiner correctly finds that both references provide user self-assessments and seek evaluations of user skills from co-workers and other third parties and then match those assessments to job descriptions to identify matches and/or further training to improve individual skills to qualify better for a job. Final Act. 5–11; Ans. 32–37; Roecker ¶¶ 1–5, 25, 30, 40–42, 50, 51, 56, 60, 71–73, and Figs. 1–16; Schmidt ¶¶ 2, 33, 39, 42, 43, 46, 55, 56, 61, 62, 65, 69, and 73. Schmidt thus identifies third parties who can provide evaluations in Roecker's method. Thus, we sustain the rejection of claim 1.

Claim 2

Claim 2 depends from claim 1 and recites further steps of managing real time recommendations for online training, coaching, or eLearning tied to results of the assessment evaluation criteria and providing instantaneous access to training products with recommendations tailored to each person. Appellant argues that Schmidt does not teach such instantaneous distribution of training programs but instead provides for such materials to be created to address individual or organizational objectives and weaknesses such that no programs are immediately available but must be designed. Br. 26.

This argument is not persuasive in view of Roecker's teaching that an administrator can view a list of skill levels and employees who have or have not attained certain levels to design training or to link to particular training programs that can be offered *automatically* to users who require training to a particular skill or set of skills based on the completed assessments. Roecker ¶ 73. Appellant's arguments that Schmidt does not teach these features does not apprise us of error in the Examiner's findings that Roecker does. Final Act. 12; Ans. 39. Thus, we sustain the rejection of claim 2.

*Claims 3–9, 13, and 14
As Unpatentable Over Roecker, Schmidt, and Fox*

Regarding claims 3–8, which depend from claim 1, Appellant argues that these claims recite very specific user rights of a master distributor, distributor, company, client, and third parties that are more complex than those taught by Fox, which the Examiner relies on for these features. Br. 31. Appellant also argues that it would not have been obvious to combine Fox with Roecker and Schmidt in the manner specified. *Id.* at 27.

Appellant's arguments are not persuasive for the following reasons. First, Roecker largely teaches the use of different levels of access for a user, a supervisor, an administrator, and a third party involving user profiles and passwords and the like recited in claims 3–9. Roecker ¶¶ 33, 51. For example, third parties that provide assessments of individuals may see the same job information as a user who performs the self-assessment, but the third party may not access other parts of the system. *Id.* ¶ 51. The third party cannot continue to use any other function and is logged out of the system. *Id.* ¶¶ 54, 56. An administrator may add, delete, or edit the job descriptions, job ladders, competencies, project profiles, and skills by having access to the add, delete, and/or edit functions while the user may be limited only to viewing the functions and performing assessments. *Id.* ¶ 57. Users can manage their skill profiles. *Id.* ¶ 60. Administrators can view a list of skill levels for all employees and see all assessments performed for a user in detail. *Id.* ¶ 73.

Schmidt also teaches the use of employer password and access rights for an employer's user account and profile and data. Schmidt ¶ 28. Users of the system (job applicants) also may access the system with a username and a password to access personal and professional information. *Id.* ¶¶ 32, 43. Job applicant users also may manage their accounts, passwords, and the like. *Id.* ¶ 43.

Consistent with these teachings, Fox teaches a central processing computer that controls what information is authorized and allowed to be provided to a requesting individual or entity, student, educational provider, education materials provider, or education tools provider or education computer-enabled tools provider, payer, or intermediary. Fox ¶ 328.

We hold that the Examiner had a reasonable basis for determining that the combination of these teachings render obvious the limitations recited in claims 3–8. The Specification provides no disclosure of these features as argued by Appellant beyond the recitation of these features in the original claims 3–8. We find no definition or other disclosure of a master distributor level of rights, a distributor level of right, a company level of rights, a client level of rights, or a third party level or rights that would suggest a narrower reading of these limitations than applied by the Examiner.

As discussed above, Roecker and Schmidt teach systems that allow users and employers to establish accounts with passwords to access certain information and control access of selected others to such information. In addition, Roecker teaches a further level of administrator that corresponds to either a master distributor and/or a distributor of rights to others and also renders obvious such additional levels. Fox teaches further delineation of tiers or levels of authorized access to information by individuals or entities, which would encompass all of the claimed categories. Fox ¶ 328. Fox also teaches that central processing computer 10 can determine for particular information requested by an individual or entity whether access is allowed or authorized to obtain, change, alter, or just access any information contained in a student's or individual's records or file. *Id.* The references also teach to provide access to web-based materials illustrated as a series of screens or levels of a user interface, which would correspond to a link as claimed.

Appellant's argument that claims 3–8 recite several very specific and narrow claim limitations for each level (Br. 31) does not apprise us of error in the Examiner's findings on this record. 37 C.F.R. § 41.37(c)(1)(iv); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011)

The Examiner's reason for combining teachings of Fox with those of Roecker and Schmidt to render obvious claims 3–8 also is supported by a rational underpinning of providing a methodology of setting up password permissions to safeguard private information and grant access based on a specific individual or entity's purpose and role. Final Act. 16; Ans. 39–41. This rationale is supported by the teachings of the references of this practice in such systems that collect records of individual's personal information to allow individuals and entities with a need to know to access the information that they need to know. Thus, we sustain the rejection of claims 3–8.

Claim 9

Independent claim 9 recites a system that includes a password having a set of permissions to manage distribution of recommendations for online training, coaching recommendations, or eLearning tied to results of current competencies versus desired competencies. Appellant argues that there is no discussion of recommendations being provided to a user in Roecker. Br. 28.

As discussed above, Roecker, paragraph 73 teaches that the method of assessing individual skills and comparing those skills to job descriptions can be linked to particular training programs that are offered to users who need training to a particular skill or set of skills for a job and the user is offered the training automatically after the assessments are completed. Roecker also teaches that this recommended training is provided based on an assessment of a user's skills compared to a current job description with a listing of skills that need improvement for a user to achieve a satisfactory rating on a current job or to meet requirements for the next job in the job ladder. *Id.* ¶ 71; Ans. 41–42. Appellant's arguments do not apprise us of error in the Examiner's findings in this regard. Thus, we sustain the rejection of claim 9.

Claims 13 and 14

Independent claim 14 recites a method that provides immediate, real time recommendations for online training, coaching, or eLearning based on assessment evaluations and providing assessment that are sold to businesses and individuals. Appellant argues that Roecker does not teach evaluating criteria based on current competencies versus desired competencies in the performance of an individual's proficiency or respondent's goals and Fox does not teach the sale of assessments and evaluations. Br. 29–30.

As discussed above, Roecker teaches to assess and evaluate a user's performance skills and competencies for a particular job description and to identify skills that need improvement to improve ratings and get promoted and then to automatically recommend training to individuals for such skills. Roecker ¶¶ 71, 73. Appellant's arguments do not apprise us of error in the findings of the Examiner in this regard. Ans. 43.

The Examiner finds that Fox teaches the provision of data provided by questionnaires and the provision of educational products and services and further teaches that the system can act as a clearinghouse for the sale of such education related services, products, and/or goods. Final Act. 24; Ans. 43; Fox ¶¶ 181, 182, and 219. Appellant's arguments do not apprise us of error in the Examiner's findings in this regard. We also agree with the Examiner that Appellant's argument that Fox does not recommend such services or products for sale to a user based on their performance or development (Br. 29) is not commensurate with the scope of claim 14 (Ans. 43) and therefore is not persuasive. Thus, we sustain the rejection of claim 14.

We also sustain the rejection of claim 13, which depends from claim 9 and which is not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appeal 2017-006336
Application 13/151,407

*Claims 10–12
As Unpatentable Over Roecker, Schmidt, Fox, and Levin*

Appellant does not present arguments for this rejection of claims 10–12 as unpatentable over Roecker, Schmidt, Fox, and Levin. *See* Br. 14–33. Therefore, we summarily sustain this rejection.

DECISION

We affirm the rejection of claims 1–14 as directed to a judicial exception to patentability under 35 U.S.C. § 101.

We affirm all prior art rejections of claims 1–14.

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